

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY) DOCKET NO.
) 05-0159
)
Proposal to implement a competitive)
procurement process by establishing)
Rider CPP, Rider PPO-MVM, Rider)
TS-CPP, and revising Rider PPO-MI.)
(Tariffs filed February 25, 2005))

Springfield, Illinois
September 1, 2005

Met, pursuant to notice, at 9:00 A.M.

BEFORE:

MR. MICHAEL WALLACE, Administrative Law Judge

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1		<u>I N D E X</u>			
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I N D E X

EXHIBITS

MARKED

ADMITTED

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1 PROCEEDINGS

2 JUDGE WALLACE: Back on the record. We will
3 now go on with the 05-0159 schedule and I believe
4 that's --

5 MR. RIPPIE: Yes, Your Honor, the company has
6 four additional witnesses today. Three of them are
7 in the hearing room, now, Mr. Schnitzer, Dr.
8 Hieronymus and Mr. Naumann. None of them have been
9 sworn.

10 JUDGE WALLACE: Would all three of the
11 gentlemen please stand up at this point? Raise your
12 right hands.

13 (Whereupon the
14 Witnesses were duly
15 sworn by Judge
16 Wallace.)

17 JUDGE WALLACE: We are going first with --

18 MR. RIPPIE: Mr. Schnitzer.

19 JUDGE WALLACE: Please take the stand. Please
20 give your answers into the microphone so people in
21 Chicago can hear.

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MICHAEL SCHNITZER

called as a Witness on behalf of Commonwealth Edison
Company, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. RIPPIE:

Q. Good morning, Mr. Schnitzer.

A. Good morning.

Q. Will you please state and spell your full
legal name for the court reporter?

A. Yes, my name is Michael Schnitzer,
M-I-C-H-A-E-L, S-C-H-N-I-T-Z-E-R.

Q. Mr. Schnitzer, have you prepared or caused
to be prepared under your direction and control
direct testimony for submission to the Illinois
Commerce Commission in Docket 05-0159?

A. I have.

Q. Is that testimony designated Commonwealth
Edison Exhibit 4.0? I am sorry, it is not. 6.0?

A. My copy says 6.0.

Q. Mr. Schnitzer, do you have any revisions or
corrections that you wish to make to Commonwealth

1 Edison Exhibit 6.0 as it was filed on e-Docket with
2 filing number 55889?

3 A. I have one correction.

4 Q. And what correction is that?

5 A. That's on page 8, line 198. The second
6 word from the end of that line, the word "have" is
7 superfluous and should be deleted.

8 Q. With the exception of that deletion, if I
9 were to ask you these same questions that appear on
10 Commonwealth Edison Exhibit 6.0, would you give me
11 the same answers?

12 A. Yes.

13 Q. Attached to Exhibit 6.0 is a document
14 entitled Exhibit 6.1. What is that?

15 A. That's a copy of my resume'.

16 Q. Any additions or corrections you need to
17 make to the resume'?

18 A. No.

19 MR. RIPPIE: Thank you. Your Honor, I have no
20 further questions for Mr. Schnitzer and I would offer
21 Commonwealth Edison Exhibit 6.0 and 6.1 into
22 evidence.

1 JUDGE WALLACE: Mr. Schnitzer had direct only?

2 MR. RIPPIE: He had direct only.

3 JUDGE WALLACE: Any objection? Hearing none,
4 ComEd Exhibits 6.0 and 6.1 are admitted.

5 (Whereupon ComEd
6 Exhibits 6.0 and 6.1
7 were admitted into
8 evidence.)

9 Does anyone have cross of Mr. Schnitzer?

10 MR. ROSEN: I do. I guess I'm the one that
11 goes first.

12 JUDGE WALLACE: Please go ahead and pull the
13 mic over there.

14 CROSS EXAMINATION

15 BY MR. ROSEN:

16 Q. Mr. Schnitzer, my name is Larry Rosen. I
17 represent the Citizens Utility Board. I have just
18 some questions for you. I noted in your direct
19 testimony that you have said that you have testified
20 before the FERC on a number of different matters?

21 A. That's correct.

22 Q. How many times have you testified before

1 FERC?

2 A. I don't have the precise figure in docketed
3 hearings, probably plus or minus ten times and in
4 technical conferences and the like on several more
5 occasions.

6 Q. The ten times that you testified in docket
7 proceedings, were you hired by someone to testify?

8 A. Yes.

9 Q. And in those ten proceedings were you hired
10 by utility companies, power generators?

11 A. I think in those instances before the FERC
12 my client would have been an energy company, probably
13 an integrated utility.

14 Q. And so at no time during those FERC
15 proceedings did you ever represent a company like CUB
16 which represents the consumers of the state of
17 Illinois, is that correct?

18 A. Not before the FERC, that's correct.

19 Q. And have you ever testified in a proceeding
20 such as this in front of a commerce commission?

21 A. Not in Illinois, no.

22 Q. In other jurisdictions?

1 A. Yes.

2 Q. And what other jurisdictions were these?

3 A. There are many. All of the New England
4 states, New York, Pennsylvania, Mississippi ,
5 Arkansas, Louisiana , Texas and may be a few more,
6 either Maryland or Delaware, I can't remember which
7 one.

8 Q. And how many times in a commerce commission
9 proceeding have you had testimony introduced?

10 A. By your questioning you mean a state
11 regulatory commission?

12 Q. Correct.

13 A. I don't have that figure, but I believe it
14 to be greater than 20.

15 Q. And in those 20 times or so were you hired
16 by someone to testify?

17 A. Yes, with the caveat that on some occasions
18 I was appearing on a pro bono capacity. My services
19 were offered on a pro bono basis.

20 Q. Let's ignore the pro bono situation. Let's
21 just take those situations where you were hired by
22 someone. Who were you hired by in most instances?

1 A. In most instances by energy companies.

2 Q. And would these be energy companies like
3 Exelon Generation or Commonwealth Edison?

4 A. They would be in most instances companies
5 like Commonwealth Edison or like Commonwealth Edison
6 prior to deregulation.

7 Q. And today you are being paid by
8 Commonwealth Edison, I take it?

9 A. That is correct.

10 Q. Now, your testimony deals with the PJM
11 markets?

12 A. In part, yes.

13 Q. Just out of curiosity, I am assuming you
14 know what has happened down in the area of New
15 Orleans and Mississippi and Louisiana?

16 A. This week you are speaking of?

17 Q. Yes.

18 A. Yes.

19 Q. And have you read some of the natural gas
20 suppliers have been affected by the tornado that hit?

21 A. Well, I have read that the natural gas
22 suppliers have been affected by the storm. I haven't

1 read specifically anything about tornados.

2 Q. I am sorry, I misspoke, hurricane. Have
3 you checked the PJM market in the past four days?

4 A. I have not.

5 Q. Do you know whether or not that disaster
6 has had an impact on PJM prices?

7 A. It wouldn't surprise me if it had.

8 Q. I am assuming that would drive the prices
9 up?

10 A. My understanding is that natural gas prices
11 for current and near forward delivery had increased,
12 and it wouldn't surprised me if those price increases
13 would have affected prices, particularly in eastern
14 PJM.

15 Q. Now, have you heard of any nuclear plants
16 that generate electricity having been affected at all
17 by the hurricane?

18 A. I don't know one way or the other.

19 Q. On the PJM markets who tends to set the
20 prices that exist either on the day-ahead market or
21 on the real-time market? Producers of electricity
22 by nuclear facilities, by fossil fuel such as coal or

1 by natural gas?

2 A. It depends on the market, the season and
3 the time of day.

4 Q. Let's just take base load.

5 A. Base load is neither a market season nor
6 time of day.

7 Q. How about season, off season?

8 A. So are you asking me about either the
9 spring or the fall?

10 Q. Precisely.

11 A. Okay, in the spring or the fall it would
12 depend on the time of day. It could be --

13 Q. About non-peak hours --

14 JUDGE WALLACE: Don't talk over each other.

15 Q. I am sorry.

16 A. Whose court is the ball in? I'm sorry.

17 Q. Why don't you go ahead?

18 A. It would depend. Even within, say, the
19 spring season it would depend on what portion of PJM
20 and the time of day.

21 Q. How about just non-peak hours?

22 A. Again, in non-peak hours in the western

1 portion of PJM in those seasons, one would expect
2 that the price would be set by nuclear coal.

3 Q. Nuclear or coal?

4 A. (Nodded in the affirmative)

5 Q. Are there any time when the prices are set
6 by the generators of power of fossil fuel or natural
7 gas?

8 A. Well, coal being a fossil fuel, yes.

9 Q. And how often does that have an effect on
10 the PJM market?

11 A. I don't have that statistic. But again it
12 would depend on what portion of the PJM market and
13 what particular time of year you are talking about.

14 Q. Have you ever done an analysis of to what
15 extent fossil fuel plant has impacted the PJM market
16 in terms of prices?

17 A. I am sorry, specific fossil fuel plant?

18 Q. Yes.

19 A. No.

20 Q. Have you ever done an analysis of how often
21 plants that generate electricity through natural gas
22 have impacted prices on the PJM market?

1 A. I have an understanding in various parts of
2 PJM as to when that might be the case or how
3 frequently.

4 Q. When is that the case based on your
5 understanding?

6 A. Well, in the eastern regions of PJM my
7 understanding is that natural gas power generation
8 will set the price over half the hours of the year,
9 and in the western regions of PJM, including northern
10 Illinois, that proportion of time is substantially
11 less and I believe currently plus or minus ten
12 percent for the hours.

13 Q. And is that because of the amount of
14 nuclear reactor plants that are located in Illinois?

15 A. It is a function of the fact that
16 incremental load in this region could be served by
17 either nuclear or coal most hours of the year.

18 Q. What's your understanding of the types of
19 companies that are going to be bidding in the auction
20 that's being proposed here?

21 A. I believe as is stated in my testimony my
22 expectation would be that it would include owners of

1 generation in PJM, owners of generation outside of
2 PJM, and various sorts of financial players that own
3 no generation in PJM.

4 Q. Is it your understanding that Exelon
5 Generation probably will be a bidder in the auction
6 that's being proposed to take place here?

7 A. It may well be.

8 Q. Do you have any reason to believe it won't
9 be?

10 A. Well, I don't know -- I don't have any
11 reason to believe that it won't be specifically but
12 nor do I -- nor am I aware of any specific plan that
13 they would be just be.

14 Q. Would you expect them to be?

15 A. If the auction is approved as proposed, I
16 would suspect that they might well be a participant.

17 Q. And do you have any idea to what extent
18 Exelon Generation's electricity is generated through
19 nuclear plants?

20 A. I am sorry, in what region are you asking?

21 Q. In this region here.

22 A. I don't have a precise figure, but a

1 substantial portion of the generation that they own
2 or control in this area is nuclear.

3 Q. Do you have any idea what that percentage
4 is?

5 A. I don't.

6 Q. And given the fact that a substantial
7 portion of the electricity they produce here is
8 generated by nuclear facilities, do you have an
9 opinion of how that positions them with respect to
10 other bidders that may participate in the auction
11 process here?

12 A. It doesn't position them any differently
13 one way or the other.

14 Q. And why is that?

15 A. Because Exelon Generation, like any
16 generation owner, has the choice of participating in
17 the auction or selling their output in other markets.
18 And so their participation in the auction will be a
19 function of the economics of participating in the
20 auction compared to their other alternatives. And in
21 that respect they are no different than any other
22 potential bidder in the marketplace.

1 Q. But is there a reason why they would want
2 to participate in the auction, even though they may
3 be able to sell their electricity in different
4 markets? Is there a benefit to them?

5 A. There could be. It depends on -- I suppose
6 it depends upon, among other things, the price but it
7 could be.

8 Q. Well, but do you have an opinion of whether
9 they would be a benefit to them?

10 A. I don't have an opinion independent of the
11 economics of the price, no. If you are asking me is
12 there a benefit to them no matter what, my answer is
13 no.

14 Q. Oh, do you think there is a benefit of them
15 being able to answer to a one-year, three-year or a
16 five-year contract to provide power?

17 A. Yes, but the auction is not the only
18 mechanism by which they could enter into such
19 contract.

20 Q. What other ways could they enter into such
21 contracts?

22 A. On a bilateral basis with other market

1 participants.

2 Q. How many companies that you know of acquire
3 their electricity through the negotiation of
4 bilateral contracts?

5 A. I am sorry, you are going to have to be a
6 little more specific. Companies that I know of?

7 Q. Well, companies like Commonwealth Edison.

8 A. The distribution companies in the areas of
9 retail choice, is that what you are asking me?

10 Q. Sure.

11 A. I don't have a statistic but the vast
12 majority of them, I think, well, certainly the
13 majority, perhaps the vast, vast majority acquire
14 their power through auction or competitive
15 procurement process such as is being proposed here.

16 Q. But my question is how many companies do
17 you know of acquire their electricity, a company like
18 Commonwealth Edison, through negotiations of
19 bilateral contracts?

20 A. I guess it would be -- it would be the
21 universe of what I just said. Most of them use a
22 full requirements auction process of one sort or

1 another.

2 Q. Well, New Jersey is the only state that
3 runs such an auction, isn't that correct?

4 A. That is not correct.

5 Q. And your --

6 MR. RIPPPIE: Your Honor, can Mr. Schnitzer just
7 please be allowed to finish his answer before we get
8 to the next question?

9 JUDGE WALLACE: Yes, please let him complete
10 his answer.

11 BY MR. ROSEN:

12 Q. The state of New Jersey is the only one
13 that has an auction such as this, isn't that right?

14 A. I don't believe that's right. But I don't
15 believe my previous answer was restricted to
16 auctions. I said full requirements procurement of
17 one sort or another, I believe is what the transcript
18 will reflect.

19 Q. But I am asking you now, as far as you know
20 New Jersey is the only --

21 A. And my answer to you is no, sir. It is not
22 the only state.

1 Q. What other state does?

2 A. Ohio, for instance, utilizes such an
3 auction at a minimum, and there may be others that
4 have used that particular auction.

5 Q. How often does Ohio do that?

6 A. They have announced their intention to do
7 it once a year and they have done it the first year.

8 Q. And did they accept those rates?

9 A. They didn't in that instance.

10 Q. Do you know of any auctions since then?

11 A. I do not.

12 Q. Now, the PJM market sets prices on a
13 day-ahead and real-time, isn't that correct?

14 A. Yes.

15 Q. Based on those rates do companies ever,
16 companies with selling power and companies acquiring
17 power, do they ever negotiate off that market using
18 the rates as a benchmark, if you will?

19 A. Are you asking me if they enter into fuller
20 contracts before the fact, the price of which will
21 reflect the PJM actual prices?

22 Q. Or they will use the PJM prices as a

1 benchmark in negotiating a contract that's either
2 over a year, two years, three years or whatever?

3 A. I don't know in that context. I'm not sure
4 what you mean by the word "benchmark".

5 Q. Well, do they use it as a basis of trying
6 to arrive at a price, if it is a fixed price in the
7 contract?

8 A. PJM doesn't have day-ahead or real-time
9 prices in advance. They have them the day ahead and
10 they have them in real time. So if someone is
11 negotiating a price for the next year, they are going
12 to -- either buy or sell is going to be based on
13 their expectation of what that product is worth in
14 the market. That will be informed, perhaps, by
15 current prices, but there is no way that those can be
16 a benchmark per se in the way that I would interpret
17 them.

18 Q. Have you ever participated in an auction at
19 all?

20 A. Of the type that's proposed here?

21 Q. Yes.

22 A. I have not.

1 Q. Have you ever been asked to run an auction
2 as an auction manager?

3 A. I have not.

4 Q. Have you ever been asked to advise a
5 company who is participating in an auction in any way
6 or any manner?

7 A. I don't think so.

8 Q. Are you an economist?

9 A. My master's degree is in management. I
10 have economics course work, but I am not an
11 economist.

12 Q. So if I asked you things about bid rigging
13 or gaining or collusion of any sort, do you feel
14 qualified to answer any of those questions?

15 A. That's not my area of expertise.

16 MR. ROSEN: I have nothing further.

17 JUDGE WALLACE: Ms. Hedman, do you have
18 questions?

19 MS. HEDMAN: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. HEDMAN:

22 Q. Mr. Schnitzer, my name is Susan Hedman. I

1 mean with the Office of the Attorney General and I
2 represent the People of the State of Illinois in this
3 proceeding.

4 A. Good morning.

5 Q. Good morning. I have just one question for
6 you. If you would turn to page 4 of the direct
7 testimony that you filed in this docket and take a
8 look at lines 89 through 91, there you assert that
9 through the approach of procuring full requirement
10 supply through the proposed auction, ComEd's
11 customers will realize benefits of the market. Have
12 you quantified those benefits?

13 A. I have not.

14 Q. You haven't done a study of any sort to
15 quantify or otherwise enumerate those benefits?

16 A. I have not done a quantitative analysis,
17 no.

18 MS. HEDMAN: Thank you.

19 JUDGE WALLACE: That's all you have?

20 MS. HEDMAN: Yes, Your Honor, thank you.

21 JUDGE WALLACE: Anyone else have cross of
22 Mr. Schnitzer? Mr. Reddick, would you mind pulling

1 the microphone over?

2 CROSS EXAMINATION

3 BY MR. REDDICK:

4 Q. Mr. Schnitzer, my name is Conrad Reddick.
5 I represent the IIEC. And I would like to direct you
6 to lines 674 of your testimony and the lines
7 following. And in that --

8 A. Let me find the right page. It is page 29?

9 Q. Page 29.

10 A. I have it.

11 Q. And in that section you discuss the review
12 period following the auction, correct?

13 A. I do.

14 Q. And if I understand your testimony, your
15 position is that a longer review period might affect
16 bidders' perception of the auction process?

17 A. That's one of the observations, yes.

18 Q. Well, that's the one I want to focus on. I
19 didn't mean to suggest that was the only one. And
20 you testify that bidders will believe that the
21 auction might be rejected for reasons other than the
22 ones stated in the ComEd proposal if the review

1 period is extended for additional consideration of
2 the auction by the Commission?

3 A. Yes. In this particular section of the
4 testimony that you are asking about is an extension
5 of weeks or months, not additional days, just so we
6 are clear.

7 Q. Okay. And I believe you take the position
8 that even if prices fall during or after the auction,
9 as you illustrate with an example in your testimony,
10 that the ICC should compel customers to pay the rates
11 determined by the auction, nonetheless?

12 A. No, I think my testimony is that under such
13 a protracted review process, if prices did fall, the
14 Commission might well have difficulty approving those
15 contracts and would instead choose to rebid and that
16 would leave the original bidder in an asymmetric
17 situation where the contract would only go forward if
18 prices rose and the contract would not be entered
19 into if prices fell. And that asymmetric situation
20 would cause them either not to bid or to bid a higher
21 price.

22 Q. So you are not saying that the Commission

1 then should be bound by the auction results,
2 notwithstanding what happens to the market?

3 A. My testimony is that the short review
4 period is appropriate. In that review period the
5 Commission should satisfy itself that the results are
6 consistent with the then contemporaneous market
7 price. My testimony is that they shouldn't go to an
8 extend review period which would give rise to the
9 situation you are describing. So I don't have an
10 opinion on the question that you have asked me
11 because I have stated that the Commission should not
12 go there.

13 Q. So you have no opinion on what the
14 Commission should do if the review period is
15 extended?

16 A. My position is only that the Commission
17 should not extend the review period. If they don't
18 take that advice, I have not been asked to nor do I
19 have an opinion on what they should then do.

20 Q. I think that was an I do not have an
21 opinion?

22 A. You are correct.

1 Q. Have you done any quantitative study to
2 evaluate whether the value of the lower auction bids
3 that you will -- let me start over. Have you done a
4 quantitative study to evaluate whether the value of
5 the lower auction bids that you predict will occur if
6 bidders do not have the perception that the
7 Commission might reject the auction for a lower
8 contemporaneous market price, will exceed the value
9 of the potential savings to consumers if the
10 Commission actually did reject the auction price for
11 a lower market price?

12 A. Again, in the context of the extended
13 review this portion -- extended extension of the
14 review process, that this portion of my testimony was
15 addressing, I haven't done a quantitative analysis.
16 I don't think it is necessary to support the
17 conclusion that I reached.

18 Q. So the answer is no?

19 A. No.

20 MR. REDDICK: Thank you, that's all.

21 JUDGE WALLACE: Did anyone else have cross of
22 Mr. Schnitzer? All right. Any redirect?

1 MR. RIPPIE: Two questions.

2 JUDGE WALLACE: All right.

3 REDIRECT EXAMINATION

4 BY MR. RIPPIE:

5 Q. Mr. Schnitzer, in her very brief cross
6 examination Ms. Hedman asked you whether you had done
7 a quantitative study of the benefits that you believe
8 will be brought to consumers through the use of a
9 competitive procurement process. Do you recall that
10 question?

11 A. I do.

12 Q. I guess I have three. Do you think such a
13 quantitative analysis is necessary to reach a certain
14 conclusion about that result?

15 A. I do not. ComEd considered a number of
16 alternatives to that, to the approach that's
17 recommended, and I think has a sufficient basis
18 without such a quantitative study to have made the
19 choice and recommendation that is before the
20 Commission.

21 Q. My last question is could you briefly
22 explain to the Commission and to Judge Wallace what

1 the basis for reaching that conclusion would be?

2 A. Yes. The principal other alternative that
3 ComEd considered along with this full requirements
4 type of procurement was an active portfolio resource
5 procurement method where ComEd would go out and
6 assemble a power supply, and that was considered and
7 affirmatively rejected. I think many of the reasons
8 for that were actually in a presentation that I gave
9 at the kick off of the post-2006 workshop, the
10 symposium, and there is a slide there that enumerates
11 what some of those are.

12 But the short answer is that such an active
13 portfolio approach inside of the Commission review
14 and the like would be a very difficult process and
15 one which has been proven here in Illinois and in
16 other jurisdictions to produce resource decisions
17 which often turn out to be economic and increase
18 customers' costs. And that experience here and
19 elsewhere I think was sufficient to reject that
20 alternative in favor of the full requirements
21 competitive procurement.

22 MR. RIPPIE: Thank you, sir. That is all I

1 have .

2 JUDGE WALLACE: Any recross? Ms. Hedman.

3 RE CROSS EXAMINATION

4 BY MS. HEDMAN:

5 Q. Mr. Schnitzer, have you done a study to
6 examine the outcomes from a portfolio management
7 procurement approach with an auction on which you
8 base your conclusions?

9 A. I haven't done a specific study, but I have
10 20 some odd years of professional experience with
11 both models that I base my opinion on, including many
12 proceedings here in Illinois where we argued about
13 the 20-year forecast for fuels, capacities for
14 nuclear plants. I have seen the results of that.

15 Q. So you present an anecdotal sample, if we
16 can call it that, and this is your impression?

17 A. I would object to both characters. It is
18 neither anecdotal nor--

19 JUDGE WALLACE: I don't think you can object.

20 A. I would disagree with both of those
21 characterizations. It is neither anecdotal nor
22 impression.

1 Q. Have you done a study of restructured
2 states and those which are not restructured to
3 examine the differences between those that use an
4 auction like the one we have proposed here and those
5 which use a portfolio management approach?

6 A. I haven't done that study. I don't
7 believe it would be relevant to this proceeding, but
8 I haven't done a study.

9 Q. And have you compared those two approaches
10 in restructured versus regulated states?

11 A. No, I haven't.

12 MS. HEDMAN: Thank you.

13 JUDGE WALLACE: Mr. Rosen?

14 CROSS EXAMINATION

15 BY MR. ROSEN:

16 Q. Were you aware that a ComEd witness
17 testified that they would run the auction even if the
18 Illinois Commerce Commission didn't approve the
19 process here?

20 MR. RIPPIE: I object both as being beyond the
21 scope of redirect and I believe not accurately
22 stating the facts in evidence.

1 JUDGE WALLACE: I believe it is beyond the
2 scope of redirect.

3 MR. ROSEN: It was only mentioned by a witness
4 during examination. We heard it in his testimony.
5 It didn't come up until someone testified to that
6 fact. I don't know if anyone ever took that position
7 in any testimony they filed.

8 JUDGE WALLACE: But I mean it is beyond the
9 scope of his redirect.

10 MR. ROSEN: He is here to testify that he
11 thinks this is a good method, and I am just wondering
12 if he believes it is a good method even if the ICC
13 doesn't approve it and Commonwealth Edison pursues it
14 without ICC approval. That's all. He gave his
15 opinion one way. I was just curious whether he was
16 going to give his opinion the other way.

17 JUDGE WALLACE: I suppose you could try to
18 rephrase the question.

19 BY MR. ROSEN:

20 Q. All right. Is it your opinion that
21 Commonwealth Edison should hold an auction regardless
22 of whether the Illinois Commerce Commission approves

1 it in this process?

2 A. I have no opinion on the question.

3 Q. One way or the other?

4 A. One way or the other.

5 MR. ROSEN: Okay, fair enough.

6 JUDGE WALLACE: I don't have any questions.

7 Thank you, Mr. Schnitzer. You may step down.

8 (Witness excused.)

9 Why don't we take a short five-minute break
10 and then we will come back with who? Who is next?

11 (Whereupon the hearing
12 was in a short recess.)

13 (Whereupon AG Cross
14 Exhibits 8 and 9 were
15 marked for purposes of
16 identification as of
17 this date.)

18 JUDGE WALLACE: Let's go back on the record. Mr.
19 Hieronimus is on the stand

20 MR. FEELEY: Judge Wallace, before we put on
21 our next witness, at the end of the day yesterday the
22 court reporter marked for identification a Joint

1 Exhibit Number 1 which was an amendment to original
2 sheet number 269 as filed by ComEd on February 25,
3 2005, and the parties were going to review that and
4 determine whether they had any cross for Mr. Crumrine
5 and if there is none, then Staff and ComEd would move
6 to admit Joint Exhibit Number 1 into the record.

7 JUDGE WALLACE: All right. Does anyone have
8 any objections to Joint Exhibit 1?

9 MR. REDDICK: I just wanted to make sure or
10 clarify that there are not objections to the
11 admission, not to the content.

12 JUDGE WALLACE: All right. I will admit Joint
13 Exhibit 1.

14 MR. FEELEY: Thank you.

15 (Whereupon Joint
16 Exhibit 1 was admitted
17 into evidence.)

18 JUDGE WALLACE: Everyone had a chance to make
19 Mr. Crumrine stay one more night. All right,
20 Mr. Rippie

21 MR. RIPPIE: Thank you, Your Honor. The
22 company's next witness is Dr. William Hieronymus.

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DR. WILLIAM HIERONYMUS

called as a Witness on behalf of Commonwealth Edison
Company, having been first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. RIPPIE:

Q. Dr. Hieronymus, as I have been asking all
our witnesses, could you please spell your last name
for the court reporter?

A. Yes, it is H-I-E-R-O-N-Y-M-U-S.

Q. Dr. Hieronymus, have you prepared or caused
to be prepared under your direction or control
surrebuttal testimony for submission to the Illinois
Commerce Commission in Docket 05-0159?

A. I have.

Q. And has that surrebuttal testimony been
designated -- going to get it right this time --
ComEd Exhibit 24.0?

A. It has.

Q. And is there an attachment thereto that has
been designated Commonwealth Edison Exhibit 24.1?

A. Yes.

1 MR. RIPPIE: Your Honor, for the record those
2 documents were filed on e-Docket and were given an
3 e-Docket filing batch number of 61487.

4 Q. Dr. Hieronymus, do you have any revisions
5 or corrections to make to Exhibit 24.0?

6 A. Yes, I do.

7 Q. What is that correction or are those
8 corrections?

9 A. It may well be that this is superfluous,
10 that there was an addendum filed to correct it, but
11 for the avoidance of doubt, on page 22, line 476, the
12 number 2.2 is improperly rounded and should have been
13 2.1.

14 Also in the line 475, the date August 18
15 appears and it should be August 15, and the same
16 correction should be made to the three previous
17 tables

18 Q. And with the exception of those two
19 corrections -- and I believe, Your Honor, that the
20 filing of the errata has not yet been completed but
21 we will file a version of this on e-Docket?

22 JUDGE WALLACE: Thank you.

1 Q. With the exception of those two numerical
2 corrections, if I were to ask you the questions that
3 appear on Exhibit 24 including the explanation of
4 Exhibit 24.1, would your answers be the same?

5 A. They would.

6 Q. Have you also prepared for submission to
7 the Commission rebuttal testimony?

8 A. Yes, I have.

9 Q. And is that rebuttal testimony designated
10 Commonwealth Edison Exhibit 15.0?

11 A. Yes.

12 Q. And are there attachments thereto
13 designated 15.1 and 15.2?

14 A. There are.

15 Q. Except insofar as that testimony is updated
16 by the surrebuttal testimony which we previously
17 discussed, do you have any revisions or corrections
18 to those pieces of testimony?

19 A. No.

20 Q. If I were to ask you these same questions
21 as appear on those Exhibits 15.0 through and
22 including the Attachments 15.2, would you give me the

1 same answers today?

2 A. I would.

3 MR. RIPPIE: For the record, Your Honor, 15.0
4 and 15.2 were filed on e-Docket July 6 in batch
5 number 60092.

6 Thank you very much, Dr. Hieronymus. I have
7 nothing further for you.

8 Your Honor, at this time I would offer into
9 evidence ComEd Exhibits 15.0, 15.1 and 15.2, 24.0 and
10 24.1

11 JUDGE WALLACE: Are there any objections?
12 Hearing none, ComEd Exhibits 15.0, 15.1, 15.2, 24.0
13 and 24.1 are admitted.

14 (Whereupon ComEd
15 Exhibits 15.0, 15.1,
16 15.2, 24.0 and 24.1
17 were admitted into
18 evidence.)

19 Does anyone have cross of Dr. Hieronymus?

20 MS. HEDMAN: Yes.

21 JUDGE WALLACE: Ms. Hedman, you may proceed.

22 MS. HEDMAN: Thank you.

1 CROSS EXAMINATION

2 BY MS. HEDMAN:

3 Q. Good morning, Dr. Hieronymus. My name is
4 Susan Hedman and I am with the Office of the Attorney
5 General and I represent the People of Illinois in
6 this docket.

7 A. Good morning.

8 Q. Good morning. I would like to start with
9 page 23 of your surrebuttal testimony. In lines 483
10 to 484 you state that you were Exelon's and PSEMG's
11 principle power market witness in the FERC proceeding
12 on the merger and hence are intimately familiar with
13 the merger and FERC's decision, is that correct?

14 A. I did.

15 Q. And I gather you testified in quite a few
16 merger cases?

17 A. Yes.

18 Q. And 12 such cases are listed on page 2 of
19 your resume', your biographical material which is
20 designated as ComEd Exhibit 15.1, is that right?

21 A. Yes, there may have been others.

22 Q. Did you testify on behalf of the merger

1 applicants in all 12 of those cases?

2 A. Yes.

3 Q. Now, returning to page 23, in a footnote on
4 page 23 of your testimony you note that the Illinois
5 Attorney General intervened before FERC to protest
6 the Exelon PSEMG merger, is that correct?

7 A. Yes, well, it intervened. I can't remember
8 whether it was south of the protest but I will accept
9 that.

10 Q. And you also note that the Illinois
11 Attorney General didn't present any evidence in the
12 FERC proceeding, is that right?

13 A. That's right.

14 Q. Did FERC actually hold any evidentiary
15 hearings in this Exelon merger docket?

16 A. No, as is typically the case it was a paper
17 hearing.

18 Q. And are you aware that the Illinois
19 Attorney General and others, including the New Jersey
20 Board of Public Utilities, objected to FERC's failure
21 to afford them an opportunity to present evidence and
22 to cross-examine witnesses in the request for

1 rehearing in the case?

2 A. I don't specifically recollect those two
3 party but I know such objections were raised.

4 Q. And on Monday the 29th of August FERC
5 issued an order granting rehearing in the Exelon
6 merger case, isn't that right?

7 A. I don't know. That's news to me but I will
8 accept it.

9 Q. Now, again going back to page 23 of your
10 surrebuttal testimony, lines 488 to 489, you assert
11 that the focus of the FERC merger proceeding was on
12 markets well to the east of Illinois, is that
13 correct?

14 A. Yes.

15 Q. By markets well to the east of Illinois are
16 you referring to what is known as PJM Classic?

17 A. Well, I am referring to areas beginning
18 with what we refer to as PJM post-2004 which is
19 classic plus Allegheny and then areas still further
20 to the east of that which are included within it.

21 Q. All right, thank you. And is the rest of
22 PJM, could we just call it, including Illinois PJM

1 West?

2 A. If you would like.

3 Q. Could ExGen plants located in PJM West sell
4 electricity into PJM Classic?

5 A. Yes.

6 Q. Are there transmission constraints that
7 would prevent or limit these sales in any way?

8 A. Sometimes, yes.

9 Q. And could ExGen plants located in PJM
10 Classic sell electricity into PJM West?

11 A. Yes.

12 Q. Are there transmission constraints in
13 congested areas that would prevent or limit these
14 sales in any way?

15 A. Generally speaking, not. Generally the
16 transmission constraints are west to east. So those
17 would be counter flows.

18 JUDGE WALLACE: The constraints are what?

19 A. From west to east, Your Honor.

20 Q. And I am asking right now about ExGen
21 facilities in PJM Classic selling to PJM West?

22 A. Yes, and that was the basis for my answer.

1 Q. On pages 23 to 25 you reject Dr. Rose's
2 recommendation regarding the need for behavioral
3 analysis of strategic bidding before approval of the
4 merger, is that correct?

5 A. That's a reasonable characterization, yes.

6 Q. You didn't do such an analysis in
7 connection with your work on the merger, did you?

8 A. No.

9 Q. Isn't it true, however, that the New Jersey
10 Board of Public Utilities presented an analysis in
11 the FERC merger case which concluded that part of
12 Exelon's market power mitigation, plant retirement,
13 could have the same effect on market prices as
14 withholding?

15 A. If so, I am not familiar with it.

16 Q. On pages 25 and 26 of your rebuttal
17 testimony you discuss price conversions between
18 northern Illinois and PJM electricity prices in
19 general and the extent to which higher coal costs
20 have influenced electricity prices, is that correct?

21 A. Yes, they are two separate subjects but
22 both of those are addressed in the pages.

1 MS. HEDMAN: Your Honor, may I approach the
2 witness?

3 JUDGE WALLACE: Yes, you may.

4 Q. Dr. Hieronymus, the document that you are
5 looking at has been marked as AG Cross Exhibit 8. Do
6 the graphs on this page which are prepared by Morgan
7 Stanley compare electricity prices in northern
8 Illinois to the mid-Atlantic region and New England?

9 A. That's what they purport to be, yes.

10 Q. And can you see from the attached cover
11 page that these graphs were included in a
12 presentation document that Exelon used a couple of
13 months ago in a briefing for European investors?

14 A. I will have to take your assertion for that
15 because I have no way of verifying it.

16 Q. Do these graphs accurately show the actual
17 prices and compare the differences between northern
18 Illinois and the mid-Atlantic region and New England?

19 A. I have no way of knowing. I have no reason
20 to presume they don't, but I don't know.

21 Q. What's the approximate minimum and maximum
22 price shown in this graph for northern Illinois?

1 MR. RIPPIE: Your Honor, is it your intention
2 to introduce this as substantive evidence, given the
3 witness' disclaimer of knowledge about it?

4 MS. HEDMAN: Well, he has independently made
5 some assertions about market price.

6 MR. RIPPIE: Which I have absolutely no concern
7 about you going into. I just have a concern about
8 reading the results of a graph into the record that
9 as far as I am concerned there is, at the present
10 time at least, no foundation for. I would have no
11 objection to asking him about what he knows.

12 MS. HEDMAN: Well, I would like him to compare
13 his knowledge of market prices with this.

14 MR. RIPPIE: I will withdraw the objection.

15 BY MS. HEDMAN:

16 Q. So what is the approximate minimum and
17 maximum price shown for northern Illinois?

18 A. Well, I would surmise based on my knowledge
19 of the market, because I can't tell it from this
20 graph, that the northern Illinois line is the lower
21 of the three, and that indicates that the northern
22 Illinois price one-year forward, ATC price, whatever

1 that is, went from approximately \$31 in September of
2 '04 to about 42 or 3 dollars in April of '05. And
3 the two-year forward prices, which is to say the
4 second of the two years, according to the legend on
5 the graph, went similarly from about \$31 to similarly
6 about 41, 42 dollars.

7 Q. And then I would like to ask you about just
8 one of the other lines, the mid-Atlantic line. Could
9 you identify the minimum and maximum for that?

10 A. Sure. Mid-Atlantic which I presume to be
11 New York and the other mid-Atlantic states, New
12 Jersey, Pennsylvania, Maryland, so forth, looks to be
13 from about \$44 to about \$53 for one-year forward and
14 similarly for the second-year forward.

15 Q. And so when you testify regarding
16 convergence of prices between northern Illinois and
17 PJM, where would your estimates fall on this
18 particular graph?

19 A. I am sorry, I don't understand the
20 question.

21 Q. Well, on page 25 of your testimony you talk
22 about your view that prices in Illinois have

1 converged with prices in the rest of PJM?

2 A. Yes, I am talking about actual prices.

3 Q. And those actual prices in northern
4 Illinois are what now on average?

5 A. I can't say as I sit here.

6 Q. And when you developed this testimony, what
7 price in northern Illinois did you have in mind?

8 A. The prices that appear on page 32 of my
9 testimony.

10 Q. I am afraid I don't see a --

11 A. In the table there is the Chicago PJM
12 generation hub.

13 JUDGE WALLACE: What are we looking at again?

14 WITNESS HIERONYMUS: Page 22.

15 MS. HEDMAN: 22, I am sorry. I was going to
16 32.

17 JUDGE WALLACE: So was I.

18 WITNESS HIERONYMUS: Or we can look if you
19 would like, perhaps simply look at page 20 which is
20 the all hours average but either one will suffice.

21 BY MS. HEDMAN:

22 Q. And how do your estimates compare with the

1 estimates shown on these graphs?

2 A. Well, of course, this is apples and oranges
3 because they are looking at forward prices. But,
4 let's see, I don't know what an ATC product is but I
5 assume it stands for around-the-clock which would be
6 equivalent to the table on page 20. And the best I
7 can come up with for a comparator, but it is not
8 really a very good comparator -- no, I can't do it.
9 I can't do it period, because this is an annual
10 average and I don't have a year of data here. The
11 closest I can come up with --

12 JUDGE WALLACE: Which one is the annual
13 average?

14 WITNESS HIERONYMUS: Well, the ones on the
15 exhibit that she gave me are annual averages of
16 forwards. And what I have in my table was at best
17 a -- it says May through August, I think it is
18 actually April through August, which was \$45 but
19 that's disproportionately summer season so that would
20 be higher than the 12-month period. So I just can't
21 make the comparison adequately.

22 BY MS. HEDMAN:

1 Q. Thank you very much. On page 28 of your
2 testimony --

3 A. Is that still the surrebuttal testimony?

4 Q. Still the surrebuttal testimony. In lines
5 600 to 601 you suggest that ComEd's decision to sell
6 its nuclear power plant to ExGen was a way of, quote,
7 protecting ComEd from any suboptimal performance of
8 the nuclear plant, is that correct?

9 A. Yes.

10 Q. Dr. Hieronymus, I would like to explore
11 this notion of suboptimal performance at nuclear
12 plants. The document that I have handed you has been
13 marked as AG Cross Exhibit 9. And does this document
14 bear the Exelon logo?

15 A. It does.

16 Q. Could you please look at the nuclear
17 capacity factors reported on the first page with
18 graphs here, reported by Exelon on the page that
19 reads "By Improved Operations, Exceptional Nuclear
20 and Generation Performance"?

21 MR. RIPPIE: Your Honor, before we proceed with
22 the examination, if I might just briefly ask Ms.

1 Hedman, is this the complete document?

2 MS. HEDMAN: It is not. It is the nuclear
3 section of a presentation that Exelon made to its
4 stockholders very recently. The date of it I believe
5 is listed on that printout from the website that I
6 gave you with the other exhibit. It was in
7 September -- I mean in August, I believe.

8 MR. RIPPIE: In any event I have no idea
9 whether this witness has ever seen this document. In
10 the event that it might help him, would you have any
11 objection to giving him the complete document. It
12 may not help him, but.

13 MS. HEDMAN: No, I do not. I believe I have
14 one right here.

15 (Pause.)

16 Actually, I don't have a complete version. You
17 can see I took the cover off and made this exhibit.
18 This is complete except for the pages that you have
19 there.

20 Q. So again I would like to focus on the graph
21 that appears in the upper right-hand portion of that
22 page that's labeled Nuclear Capacity Factors. What

1 was the capacity factor for ComEd's nuclear
2 facilities in 1997?

3 MR. RIPPIE: I object to the form of the
4 question. It is unclear whether Ms. Hedman is simply
5 asking the witness to read into the record a document
6 which has not been admitted or whether the witness is
7 being asked whether he has any knowledge of that
8 number.

9 MS. HEDMAN: I am actually asking him to report
10 what he sees on this form and then I am going to ask
11 an opinion question relating to what constitutes
12 suboptimal performance.

13 MR. RIPPIE: No objection.

14 BY MS. HEDMAN:

15 Q. So again could you please state for the
16 record the capacity factor which Exelon reports here
17 for ComEd in 1997?

18 A. Forty-nine percent.

19 Q. And could you also report the Exelon 2004
20 capacity factor for its nuclear facilities that's
21 reported by Exelon in this document?

22 A. For the combined facilities, which I assume

1 is what this is, it was 93.5 percent.

2 Q. And would you characterize either of those
3 as indicating suboptimal performance?

4 A. Certainly 49 percent would have been, yes.

5 Q. Now, if you could turn the page and look at
6 the graph in the lower left-hand corner, does that
7 graph compare Exelon's capacity factors with the
8 industry average?

9 A. That's what it says it does, yes.

10 Q. On the basis of the data presented here
11 would you characterize Exelon's capacity factor as
12 suboptimal for the years 2000 through 2004?

13 A. No, as it is worked out here it has not
14 been.

15 Q. Turning to the next page, please take a
16 look at the table labeled Production Costs Ten
17 Largest Fleets. In this graph is Exelon reporting
18 Exelon's production costs with the ten largest fleets
19 of generating facilities?

20 A. That's what it appears to be reporting.
21 That's what the title says.

22 Q. And does it show that Exelon's costs are

1 around \$13 per megawatt hour?

2 MR. RIPPIE: Your Honor, I am going to renew
3 the objection. This witness doesn't know what the
4 cost definition is. He doesn't know what the basis
5 of that data is. We are not asking him for opinions
6 here. We are just reading a hearsay document that
7 the witness has no knowledge of into the record.

8 MS. HEDMAN: Your Honor, I would like to ask
9 him whether he thinks based on this report Exelon is
10 suboptimal in its performance.

11 JUDGE WALLACE: Go ahead.

12 BY MS. HEDMAN:

13 Q. On this graph are Exelon's production costs
14 the lowest of the ten?

15 A. That's what it appears to show, yes.

16 Q. And would you characterize Exelon's
17 performance by this measure as suboptimal?

18 A. Well, by the measure of it being relative
19 to others, no.

20 Q. Thank you. I would like to turn to your
21 rebuttal testimony. On page 35 you are being asked
22 to comment on the validity of Dr. Steinhurst's

1 findings that a shift to pricing electricity at
2 market clearing prices stands to cost northern
3 Illinois ratepayers as much as \$1 billion per year
4 relative to cost based procurement. Have you made
5 any attempt to quantify the effect on consumers, the
6 impact of shifting the pricing of power from market
7 based -- or, excuse me, from cost based prices to
8 prices set by the clearing price in the auction?

9 A. No, my point here is precisely that Dr.
10 Steinhurst hasn't done that either.

11 Q. But you haven't done it?

12 A. I don't know what I would use as a cost
13 base. So, no, I haven't done it.

14 Q. And going to page 38 of your testimony.

15 A. I don't think there is a page 38.

16 Q. I'm sorry, page 37. Are you there talking
17 about Dr. Steinhurst, his statement, that his
18 calculation -- well, you talk about actual revenues
19 and you draw a conclusion about Dr. Steinhurst's
20 analysis. I am wondering if you have attempted to
21 derive any -- to analyze and compare what customers
22 are actually paying based on actual revenues and

1 compare that to what customers might pay under market
2 prices?

3 A. Just a question of clarification, I think
4 the statement here refers to revenues received by
5 ExGen, not what customers are paying. Is that what
6 you are asking me about or are you asking me about
7 something different?

8 Q. Well, actual revenues in this case are
9 essentially the rate -- well, actually that's not
10 true. Strike that. I withdraw the question.

11 MS. HEDMAN: I have nothing further. Thank
12 you.

13 JUDGE WALLACE: Any further cross of Dr.
14 Hieronimus.

15 MR. ROSEN: I do, yeah.

16 JUDGE WALLACE: Mr. Rosen.

17 MR. ROSEN: May I approach the witness, Your Honor?

18 JUDGE WALLACE: Yes.

19 CROSS EXAMINATION

20 BY MR. ROSEN:

21 Q. I am going to have to show you my -- by the
22 way, I am Larry Rosen. I am with the Citizens

1 Utility Board?

2 A. Good morning, Mr. Rosen.

3 Q. I can shake your hand. I just want to

4 follow up on some of the things that were covered

5 recently by my colleague here about forward prices,

6 one-year, two-year. Do you see these?

7 JUDGE WALLACE: What are we looking at?

8 MR. ROSEN: I think this is 7 or 8.

9 MS. HEDMAN: That is 8.

10 WITNESS HIERONYMUS: I still have my copy.

11 BY MR. ROSEN:

12 Q. See how all these prices have gone up from

13 \$30 in October of '04 and in April of '05 for the

14 one-year and the two-year rolling forward they have

15 all increased, haven't they?

16 A. They have.

17 Q. And it says ATC prices, that is

18 around-the-clock power prices, do you see that?

19 A. I do.

20 Q. And this was information compiled by Morgan

21 Stanley in April of '05?

22 A. That's what it says.

1 Q. Now, what -- in your opinion why are these
2 prices going up? What's driving the prices up?

3 A. Predominately gas and coal prices.

4 Q. So then when Exelon in its presentation,
5 the presentation it made to it shareholders in August
6 of '05 in New York City which is a part of the
7 complete exhibit that was handed to you, and I will
8 mark this as CUB Cross Examination Witness 1.

9 MR. RIPPPIE: The whole thing?

10 MR. ROSEN: I will mark the whole thing, and I
11 will get you the cover page later.

12 Q. So then you would agree that Exelon made a
13 representation to its shareholders -- let me get it
14 out of my book because I had it.

15 MR. LAKSHMANAN: Mr. Rosen, while you are doing
16 that, will we be able to get copies?

17 MR. ROSEN: Absolutely.

18 Q. So you would agree when Exelon made a
19 presentation in front of its shareholders that in the
20 east market dynamics which is part of PJM that
21 natural gas prices have been driving power prices up?

22 A. Yes, among other things.

1 MR. RIPPIE: Your Honor, can I just walk up so

2 I can --

3 JUDGE WALLACE: Yes.

4 A. I would note that they are talking here
5 specifically about when combined cycling units are on
6 the margin since combined cycling units burn gas,
7 which would obviously be the case.

8 Q. And then in terms of the Midwest market
9 dynamics you would also agree with Exelon's statement
10 that rising fuel prices of central Appalachian coal
11 and natural gas are pushing forward PJM Nihop prices
12 higher, isn't that correct?

13 A. I would expect that to be the case.

14 Q. And that is consistent with why these
15 prices are increasing on AG Cross Examination Exhibit
16 Number 8?

17 A. It is.

18 Q. And would you also agree with Exelon's
19 statement then that, of the total power Exelon
20 produces, approximately 90 percent of those are as a
21 result of its nuclear reactors?

22 A. I haven't verify the statement but that

1 looks to be roughly correct.

2 Q. And is about ten percent of that, ten
3 however they present it, as a result of their call?

4 MR. RIPPIE: Terrawatt hours.

5 A. That's what it says and I have no reason to
6 dispute it.

7 Q. And do you agree that as a result of that
8 mix that they, as they represented, are well
9 positioned for market design changes and they are
10 taking advantage of the beneficial market conditions
11 as a result of the power prices increasing?

12 A. Well, I would agree with the statement
13 about taking advantage of the beneficial market
14 conditions. I think this other statement you
15 pointed me to had nothing to do with their mix.

16 Q. So let's leave that one out. So they can
17 take advantage of the rising market conditions
18 because of what that graph shows and let's say 90 to
19 10 they do -- let's say 90 percent of their power is
20 generated by nuclear reactors and ten percent is
21 generated by coal, isn't that correct?

22 A. That's what it shows.

1 Q. Do you agree with that?

2 A. I told you I have no -- I haven't
3 specifically looked at the numbers but it would seem
4 to be approximately right for their own generation in
5 the Midwest.

6 Q. So you have no reason to disagree with
7 those numbers?

8 A. No.

9 Q. Okay. Would you say as a result of the mix
10 of the 90/10 that Exelon has represented in some of
11 the exhibits that I showed you that that positions
12 them well in the bidding process in the auction
13 that's being proposed here?

14 JUDGE WALLACE: Please pull the mic back, Dr.
15 Hieronymus.

16 A. No, I don't see that that follows.

17 Q. Why wouldn't it?

18 A. I don't know why it would. Exelon
19 Generation is a generator. It has generation that
20 can be used for a variety -- can be sold in a variety
21 of ways. It will get the market price for that
22 generation, whatever it is, in whatever market it

1 sells in. I don't see anything unique or special
2 about the auction process.

3 Q. Okay. Well, to your knowledge are they
4 going to participate in the auction process?

5 A. I have no knowledge of it. I would be
6 surprised if they did not participate either directly
7 or indirectly.

8 Q. All right. Let's say that they participate
9 directly. Do you know if the load caps that are
10 being produced, that are being suggested here, 50
11 percent is originally proposed or 35 percent is
12 amended?

13 A. That's my understanding.

14 Q. Okay. And would you expect, given the load
15 cap of 35 percent, that Exelon Generation would
16 participate as a bidder in the auction process?

17 A. That doesn't follow. Just I would expect
18 that they would. But that in and of itself tells me
19 nothing.

20 Q. Let's assume that they are participating in
21 the auction process. Given the makeup of how their
22 nuclear power and coal power electricity has been

1 generating, 90 percent nuclear, 10 percent coal, how
2 does that position them as a bidder if they do decide
3 to participate directly in the auction that is being
4 proposed here?

5 A. I don't know how to improve my previous
6 answer. Based on those numbers --

7 JUDGE WALLACE: Let him answer.

8 A. If they are limited to 35 percent,
9 obviously the bulk of your base load generation is
10 not going to be sold through the auction.

11 Q. But are they going to be better positioned
12 in the auction?

13 MR. RIPPIE: Let him please finish his answer.

14 MR. ROSEN: I thought he did.

15 WITNESS HIERONYMUS: I will let it rest there.

16 MR. ROSEN: Okay. I get a little bit --

17 JUDGE WALLACE: We have noticed.

18 MR. ROSEN: Gee, I wonder why.

19 Q. Well, let's compare them to other
20 generators of power then. Someone who is bidding in
21 the process who is generating by fossil fuel, are
22 they going to be better positioned in the auction

1 than Exelon is?

2 A. It doesn't matter. Any bidder in the
3 auction is going to have to assemble a portfolio of
4 bilateral-owned spot resources to meet its load
5 requirements that it acquires in the auction. Any
6 generator is going to sell its generation to the
7 extent it is economic, either directly in the
8 auction, indirectly to another participant or via
9 some other method. The two actually are quite
10 separate from each other.

11 Q. But is Exelon either way here, as a
12 supplier to someone else who is bidding or as a
13 direct bidder, are they going to be better positioned
14 to sell into those markets, given the fact that 90
15 percent of their electricity is generated by a source
16 that's cheaper than if they had generated electricity
17 either by coal or by natural gas?

18 A. Well, the variable cost of nuclear power is
19 below everything except hydro. So if you own nuclear
20 generation, it will run more or less flat out. In
21 that sense you are positioned to generate a lot and
22 sell that power to someone in some fashion. If I am

1 a peaking plant, to choose the fuller example, it
2 won't run very much. I am still in the same
3 position. I am going to sell it to the extent it has
4 value, to someone in some market. So there is
5 nothing unique about nuclear except that it is going
6 to run a lot.

7 Q. And it is going to be cheaper?

8 A. It is going to be variable cost cheaper.

9 Q. And there is going to be a better margin
10 for the facility that runs most of their power
11 through generating by nuclear power?

12 A. There are going to be bigger margins
13 between their variable operating costs and the
14 revenues received through a market, yes.

15 Q. Now, we have heard throughout this hearing
16 that not every state regulatory agency or state
17 facility have approved the formulation of RTOs. Are
18 you aware of that?

19 A. Yes.

20 Q. Why have some of the states objected to the
21 formulation of RTOs?

22 A. Well, I have to give you my impression. I

1 can't speak for them.

2 Q. Okay.

3 A. In a lot of cases it's a state's rights
4 issue. It is not surprising that these are red
5 states for the most part.

6 Q. What are red states?

7 A. They are the political red/blue. They are
8 southern, western states.

9 JUDGE WALLACE: Otherwise known as Republican.

10 A. Well, let's just stick with red, Your
11 Honor.

12 Q. I thought that was a Yankee confederate
13 term but I wasn't certain. Go ahead.

14 A. Some of the states have a lot of preference
15 power and they are afraid of losing the benefit of
16 that if FERC becomes involved in the pricing of
17 wholesale markets. In some cases, frankly, they are
18 heavily influenced by utilities that don't want to
19 give up their power by being in an RTO. And some
20 just don't believe in competitive markets, I expect,
21 which is odd for red states but nevertheless there it
22 is.

1 Q. How many RTOs are there now?

2 A. There is obviously the three eastern ones.
3 I think California qualifies as an RTO. SPP has some
4 sort of RTO status. That would be five that are
5 jurisdictional to FERC. FERC for all intents and
6 purposes is an RTO, so that would be six.

7 Q. The California RTO that you just described
8 won't have any impact in the bidding here, will it?

9 A. No.

10 Q. That's because there are too many
11 constraints and so on?

12 A. The grids are asynchronous. There is
13 almost no power that flows between the eastern
14 interconnect and the western interconnect.

15 Q. So in terms of RTOs, how many RTOs are
16 really at play here in this auction process?

17 A. I would expect primarily three.

18 Q. One is PJM?

19 A. Yes.

20 Q. What's the second?

21 A. Midwest ISO.

22 Q. And what is the third?

1 A. SPP.

2 JUDGE WALLACE: I couldn't understand you. The
3 third one?

4 WITNESS HIERONYMUS: SPP, Your Honor.

5 BY MR. ROSEN:

6 Q. Where is SPP located?

7 A. Oklahoma, Kansas, I think western Missouri.
8 It used to include Akergy (sp) but it doesn't any
9 more. I think it has got parts of Arkansas.

10 Q. I haven't heard of SPP being mentioned in
11 any of the materials that we have seen so far. Why
12 is that?

13 A. Well, presumably because it has no Illinois
14 footprint.

15 Q. And are they going to have any impact on
16 the bidding process that takes place here?

17 A. Well, generators in SPP could. The RTO
18 itself won't have any impact. But it is entirely --
19 the generation in the SPP, some of it is very cheap.
20 They are long on coal, a lot of cheap coal, and so
21 that's put a lot of pop to flaunt.

22 Q. Even now?

1 A. Yes.

2 Q. Are there any transmission constraint?

3 A. There are limits on the big east or
4 north/south lines, the east line. I can't remember
5 the names of all the lines any more. So the
6 capability is finite and occasionally constrained.

7 Q. Does that make them constrained in any part
8 of Illinois?

9 A. Those lines don't directly go into
10 Illinois. The furthest east goes into Ameren in
11 Missouri.

12 Q. How long has SPP been in existence?

13 A. Well, SPP is an original reliability
14 company. It has been in existence since the mid
15 '60s.

16 Q. How long has it been in existence as an
17 RTO?

18 A. A few months.

19 Q. And Monico (sp), how long has that been in
20 existence as an RTO?

21 A. They take some kind of conditional RTO
22 status for a couple, three years and then they are

1 phasing in the various functions.

2 Q. And when does it obtain its status or final
3 approval as an RTO?

4 A. I don't know. Not usually long.

5 Q. Sometime this year, wasn't it?

6 A. Well, if you had Phase II approval, I think
7 it was an RTO prior to that but I could be mistaken.

8 Q. So the only real established long-existing
9 RTO that's in play here is the PJM RTO, is that a
10 fair statement?

11 A. In terms of having had a direct and literal
12 impact, yes.

13 Q. Would you agree that the more RTOs that are
14 in existence, the greater beneficial impact that
15 would have on the wholesale market for electrical
16 power?

17 A. Well, I can answer that question yes or no.

18 Q. Well, why don't you answer it yes and then
19 I will move on.

20 A. Well, no, in the sense that more means
21 smaller; yes, in the sense that you have got
22 depancaking of rates and the other things that go

1 with being an RTO over a wider footprint. In this
2 particular instance virtually all the relevant
3 footprint is already covered by RTOs.

4 Q. But if there were RTOs that come into
5 existence that are able to deliver power into
6 Illinois one way or the other, that would have a
7 greater, more beneficial impact on the wholesale
8 market of electrical power?

9 A. It could.

10 Q. For instance, if you talk about some of the
11 plants that generate -- I am sorry, I talked over you
12 again. I apologize.

13 A. Well I am just trying to figure out what
14 geography might be relevant. About the only place I
15 can think of that isn't an RTO that's geographically
16 is Iowa. And even there I know that -- and only part
17 of Iowa, it is the MidAmerican part of Iowa. And
18 even there MidAmerican has a proposal into FERC to
19 basically depancake rates and do most of the RTO like
20 things. So I don't think there is much more to be
21 done in terms of RTO creation that is going to affect
22 this market.

1 Q. In a positive way?

2 A. In any way.

3 Q. Well, one of the ways is a positive way?

4 A. In any way, yes, positively or otherwise.

5 Q. Okay. Now, I think you had said before

6 that you had testified -- I am assuming you have

7 testified in proceedings like this before, and that

8 means a proceeding before a regulatory body or

9 commission that is a state agency of some sort?

10 A. I have.

11 Q. How many times?

12 A. Maybe two score.

13 Q. That's 20, isn't it?

14 A. Forty.

15 Q. That's right, four score and seven years

16 ago, that's right. And on those 40 times that you

17 have testified in part of these proceedings, have you

18 been hired by someone?

19 A. Yes. Well, my firm has been hired, more

20 technically.

21 Q. And when you were hired, were you hired by

22 a consumer group like CUB or by a utility company

1 like ComEd or a generating company like Exelon
2 Generation?

3 A. I think in all instances it was the
4 utility, emergent generator or power marketer. I
5 should note sometimes it was, because of the way
6 utilities change, sometimes the distribution side of
7 the utility, sometimes it's the generating plant.

8 Q. Have you ever acted as an auction manager?

9 A. In the sense of a formal auction as opposed
10 to a sealed bid procurement?

11 Q. Yes.

12 A. No.

13 Q. Have you ever acted as what's known as an
14 independent auction advisor?

15 A. No.

16 Q. And you were hired by ComEd in this case to
17 testify?

18 A. Well, again, technically my firm was hired,
19 but yes, for me to testify.

20 Q. And it is your opinion in your testimony
21 that the auction being proposed here is a great way
22 of acquiring power by Commonwealth Edison, isn't that

1 correct?

2 A. I don't think I actually testified
3 specifically to that. I testify about the market
4 that would underpin such an auction or any other such
5 procurement method.

6 Q. Well, is it your opinion as you sit here
7 now that the auction proposal that's part of this
8 proceeding is a fine way of Commonwealth Edison going
9 about acquiring electricity?

10 A. Yes, I do. Yes, it is, sorry.

11 Q. And is the basis of your opinion that you
12 believe that the wholesale market here is developed
13 enough to support the success of such an auction?

14 A. No, that isn't the basis. I mean, it is a
15 true statement, but it is not the basis for that
16 opinion?

17 Q. So what is the basis of your opinion?

18 A. The basis for the opinion is that this is
19 an excellent way of extracting the market price
20 without having to play poker with people who in my
21 experience tend to have more cards than the people
22 they are sitting across the table from, from the

1 standpoint of being better negotiators and so forth.

2 Q. Well, just to define it, when you say it
3 has more cards, better cards, I am assuming you are
4 talking about the generators of electricity?

5 A. Not necessarily. It could be a power
6 marketer.

7 Q. Okay. But they are on the sell side of the
8 table?

9 A. The sell side, sure.

10 Q. And the buy side are the people who are
11 acquiring electricity, is that right?

12 A. Yes, and they have got their feet nailed to
13 the floor because they have to buy somehow in some
14 market in order to meet their load.

15 Q. Where do consumers sit in all this?

16 A. Well, basically the buying utility is
17 buying power in their behalf, if we are talking about
18 customers who aren't availing themselves of retail
19 access.

20 Q. Well, are you aware that in the city of
21 Chicago residential customers don't have the choice
22 of anyone other than Commonwealth Edison?

1 A. That's my general recollection.

2 Q. Okay. Now, so it is your opinion that the
3 auction is a good way to go, is that correct?

4 A. Yes.

5 Q. And it is your opinion that the market will
6 support the success of an auction?

7 A. Yes.

8 Q. Would you have any problem then with the
9 auction going forward without it being approved in
10 this proceeding by the Illinois Commerce Commission?

11 MR. RIPPIE: Your Honor, I would have to
12 object. It is considerably beyond the scope of his
13 testimony and it involves legal and policy questions.
14 He is also not an employee of the company.

15 JUDGE WALLACE: Do you have any response?

16 MR. ROSEN: They had a witness testify. He
17 said in his opinion that the auction is a good way of
18 going, he supports it, and I just want to know
19 whether he believes that the auction is the way to go
20 even if it is not approved by the Illinois Commerce
21 Commission. Just asking for his opinion.

22 JUDGE WALLACE: Okay. Go ahead and answer the

1 question.

2 A. I don't know what hat to put on to answer
3 that question. I don't know of a better way from a
4 consumers perspective to procure power than by a
5 commission-approved auction. If we go to a second or
6 third best world where that doesn't exist, then I
7 don't know what the hypothetical alternative is. So
8 from a consumer standpoint I can't say. Obviously,
9 ComEd's behavior would presumable be different if it
10 were buying at an auction that hadn't been approved.
11 Depending on the consequences of that power grid
12 pre-approval, the bidders may behave very, very
13 differently because it doesn't know what -- they
14 don't know what they face as a result of not getting
15 pre-approval.

16 So that's one hat. That's thinking about it
17 from the standpoint of consumers. From the
18 standpoint of ComEd, to go ahead and do something
19 that the Commission has told them not to do strikes
20 me as madness

21 Q. Well, what if the Commission didn't take a
22 position one way or another and said you just go

1 about procuring electricity in the way you think is
2 best and since they have taken such a strong position
3 that the auction is the best way of going and in fact
4 there was testimony that they would pursue the
5 auction even if the ICC didn't pre-approve it, let's
6 assume they go ahead with the auction then if the ICC
7 didn't approve it?

8 MR. RIPPIE: In addition to renewing my
9 previous objections, that question contains facts not
10 in evidence.

11 WITNESS HIERONYMUS: It also isn't a question.
12 There was no question in that question.

13 JUDGE WALLACE: Mr. Rosen, you got it from both
14 sides of the room.

15 MR. ROSEN: Yeah, I did. Maybe I will ask a
16 different question.

17 JUDGE WALLACE: Okay.

18 BY MR. ROSEN:

19 Q. Well, this is the first time Illinois has
20 ever embarked upon acquiring the power through an
21 auction process, isn't that correct?

22 A. To the best of my knowledge, yes.

1 Q. And no one can say with certainty what the
2 result of the auction will be, isn't that correct?

3 A. I guess in the absolute sense I can't state
4 anything about the future uncertainty.

5 Q. And in the auction and bidding so on in an
6 auction you always have the problem of gaming with
7 the system, isn't that correct?

8 A. No.

9 Q. You don't? You don't have any problems
10 with bidders colluding among themselves?

11 A. Might you or do you?

12 Q. Do you?

13 A. Not in general, no.

14 Q. You have never heard of bidders agreeing
15 among themselves in the area of markets?

16 A. Yes, of course.

17 Q. Okay. Do you have any reason to believe it
18 can't happen among the bidders here?

19 A. I believe it is extremely unlikely.

20 Q. Is it a possibility?

21 A. All things are possible.

22 Q. And given the fact that the auction manager

1 has within one day of certifying the result and the
2 ICC according to the proposal has three days of
3 making a decision, what is the likelihood that we are
4 going to find out in that short period of time
5 whether something was done to the system that
6 affected negatively the results of the market, of the
7 bid?

8 A. I don't know how to answer your question.
9 You could have -- are you still talking about
10 collusion.

11 Q. Bid rigging, collusion.

12 A. I would be surprised. Either it will be
13 transparent on its face, my hypothesis, the
14 collusion, or you are unlikely to find out about it
15 for an extended period of time, and I mean extended.

16 MR. ROSEN: I have nothing further.

17 JUDGE WALLACE: Thank you.

18 MR. ROSEN: Oh, Your Honor, I just have some
19 quick questions. I am sorry, take me a minute.

20 JUDGE WALLACE: Okay.

21 MR. ROSEN: I think I am still within my 30
22 minutes. Well, I shouldn't ask that because I may

1 not be. But I am not far off.

2 Q. Okay. Just -- sorry. Now, there was a
3 proceeding before the New Jersey BPU involving Exelon
4 and the PSEG merger, wasn't there?

5 A. There is an ongoing proceeding.

6 Q. And you had filed testimony in that
7 proceeding, had you not?

8 A. Briefly, yes.

9 Q. But you had to withdraw it, didn't you?

10 A. Yes.

11 Q. And why is that?

12 MR. RIPPKE: I object to this question. It has
13 no relevance and, depending upon the nature of the
14 answer, may ask the witness both to render a legal
15 conclusion as well as to render -- it is a legal
16 conclusion.

17 JUDGE WALLACE: It doesn't appear to have any
18 relevance to what we are doing here.

19 MR. ROSEN: I think it goes to bias and
20 credibility, Your Honor.

21 JUDGE WALLACE: That he submitted testimony and
22 withdrew it?

1 MR. ROSEN: I think the reasons why might go to
2 that.

3 JUDGE WALLACE: I am going to sustain the
4 objection.

5 MR. ROSEN: Nothing further.

6 JUDGE WALLACE: It looks like on the chart that
7 Staff has some cross.

8 MS. SCARSELLA: Staff no longer has cross, Your
9 Honor.

10 JUDGE WALLACE: All right. Any redirect?

11 MR. RIPPIE: Yes, Your Honor, I will try to be
12 brief and organized.

13 REDIRECT EXAMINATION

14 BY MR. RIPPIE:

15 Q. Dr. Hieronymus, first I want to ask you a
16 couple questions with respect to the document that I
17 believe has been designated for identification
18 purposes as Attorney General Exhibit Number 9 and I
19 am going to ask you questions about the extent of
20 your knowledge of the document only. Do you know
21 what the definition of costs were on the portions of
22 that document that purport to report the costs of

1 nuclear generating units?

2 A. No.

3 Q. Do you know if they include capital costs
4 as well as operating costs?

5 A. Well, they show that they can't. So they
6 must not. Plus, it says it is production costs which
7 the jargon generally would not include capital costs,
8 fixed O&M, and a bunch of other stuff.

9 Q. Do you know whether those costs reflect any
10 multi-billion dollar write-offs that may or may not
11 have occurred prior to the calculation costs?

12 A. No, but since I don't believe they include
13 capital costs, it would follow that they do not
14 reflect those either.

15 Q. Now, I am going to put the document away.
16 I am going to ask you about your independent
17 knowledge. You testified that in general you believe
18 nuclear energy had a low operating cost. How does
19 its capital costs compare in general to other forms
20 of generation?

21 A. With the exception of the occasional hydro
22 facility they are much higher than any other form of

1 generation.

2 Q. Now, Ms. Hedman asked you three different
3 questions in which she asked you to compare
4 cost-based rates to rates based on market prices. If
5 Commonwealth Edison's auction proposal is approved,
6 what will define the cost of ComEd's acquisition of
7 energy?

8 MS. HEDMAN: I am going to object. I think
9 that calls for a legal conclusion.

10 MR. RIPPKE: I didn't intend to but I am happy
11 to rephrase it, Your Honor.

12 Q. Dr. Hieronymus, I am asking you this
13 question if there is any doubt after I rephrase it in
14 the sense of your knowledge and experience in the
15 setting of rates and I am not asking you to render
16 any opinion on the Illinois Public Utilities Act or
17 any other statute or law or regulation. Simply as an
18 economist, if this proposal is accepted, how will we
19 know what ComEd's costs of acquiring power are?

20 A. Its costs of acquiring power would be the
21 prices that it pays in the auction which will be a
22 FERC jurisdictional wholesale cost, and that's what

1 it will pay.

2 Q. With respect to the, I believe, second set
3 of questions that Mr. Rosen asked you about assembly
4 of portfolios, he asked you to compare a generator
5 that was long in peaking with a generator that was
6 long in base load. Is that a meaningful comparison?

7 MR. ROSEN: I object to that being a
8 mischaracterization of my question.

9 MR. RIPPIE: I will -- if that's the objection,
10 I will just phrase it this way, if Your Honor will
11 permit me.

12 JUDGE WALLACE: Go ahead.

13 BY MR. RIPPIE:

14 Q. Is it a meaningful comparison to compare a
15 generator -- let me try it a third way. Is it
16 meaningful in analyzing the auction proposal to
17 compare a hypothetical generator who would bid in
18 nothing but nuclear power versus a hypothetical
19 generator that would bid in nothing but peaking?

20 A. No. I was trying to explain to Mr. Rosen
21 what I do as a bidder and why I own, as the owner of
22 a generating plant, are conceptually wholly different

1 things. The opportunity costs, if you don't mind my
2 using economist jargon, of generation is what I can
3 sell it for somewhere else to someone else. And so
4 if I am going to sell it in the form of committing it
5 to an auction bid, its value that I am going to take
6 into account is its external value as generation, and
7 that's true whether I own a peaking plant or whether
8 I own a coal plant or whether I own a nuclear plant.

9 So my consideration of a bid as a bidder into
10 the auction, my success in gaining a piece of the
11 auction, is wholly independent of the generation that
12 I own. And I talked in my testimony, for example,
13 that a lot of the successful bidders in the New
14 Jersey auction don't own any generation. It is not
15 an impediment to being a successful participant in
16 the auction. So it simply doesn't matter what I do
17 or don't own in terms of the generation

18 Q. And the flip side of that question is does
19 any profits that Exelon Generation, LLC, or any other
20 generator might derive from selling the resources
21 that they own depend upon their being an auction
22 proposal as opposed to any other from of market?

1 A. No, not in any significant way. If an
2 alternative is less efficient, some of them might do
3 better, some of them might do worse. In general
4 probably on average they will do better. But
5 fundamentally the market is the market is the market.
6 And whatever the auction mechanism is or the purchase
7 mechanism is, they are going to get market prices.

8 Q. I just want to ask you one follow-up about
9 the beginning of that question. You said that it is
10 not efficient, they could do better or worse or
11 probably better. Do you have a view on whether the
12 auction is efficient?

13 A. Well, I have colleagues who are in the
14 business of being auction advisors, and I do talk to
15 them. And I am convinced that this is as good of a
16 procedure as I know of.

17 Q. Let me ask the question this way. When you
18 were talking about a non-efficient market, were you
19 or were you not thinking of the auction?

20 A. I was not.

21 MS. HEDMAN: I am going to object. He is
22 leading the witness.

1 MR. RIPPIE: That was absolutely not a leading
2 question.

3 JUDGE WALLACE: Overruled.

4 A. No, I was trying to make a comparison
5 between the auction and a less efficient alternative.

6 Q. Whatever Exelon Generation's position may
7 be in the wholesale market, does it derive its
8 flexibility or its cost structure from its
9 affiliation with ComEd?

10 A. No, not at all.

11 Q. Mr. Rosen also asked you about SPP which
12 for the sake of the court reporter stands for what?
13 What does SPP stand for?

14 A. I believe it is Southwest Power Pool.

15 Q. Thank you. And you were asked a question
16 about constraints and you said there were
17 occasionally north to south constraints?

18 A. I think south to north, actually.

19 Q. Yes. In your view are the south/north
20 constraints that you had in mind sufficient in either
21 magnitude or frequency to present an impediment to
22 the ability of SPP generators to participate as a

1 bidder in the auction?

2 A. Well, I tried to explain that generators
3 don't participate as bidders in any real sense. An
4 SPP utility could indeed participate in the Illinois
5 auction. And in, for example, the northern part of
6 SPP to the best of my recollection, basis prices are
7 very similar to what they are in the Illinois area.
8 And so they could notionally use some of their
9 generation as they have. But that's all gravy.
10 Anybody can participate in the auction who is
11 creditworthy. And whether they choose to salt heads
12 with generation or to cover with somebody else's
13 generation doesn't matter.

14 Q. This is my last question. Given the nature
15 of the auction design itself and the structures of
16 which you are aware and upon which you have
17 testified, is it your testimony that Illinois
18 policymakers should regard the possibility of bid
19 rigging or collusion as a valid reason to reject the
20 auction?

21 A. No, not at all. Even in California there
22 were no serious allegations of collusion. I know of

1 no instance of collusion in supplying electric power
2 that has ever been reported. That isn't to say it is
3 not theoretically possible. All things are
4 theoretically possible. It is, of course, illegal.
5 And I don't have any reason at all to believe it
6 would be likely to happen under these circumstances.

7 MR. RIPPPIE: Thank you. That's all the
8 redirect I have.

9 JUDGE WALLACE: Any recross? Mr. Rosen.

10 RECROSS EXAMINATION

11 BY MR. ROSEN:

12 Q. What happened in California? Didn't some
13 of the plants there purposefully take power out of
14 transmission to impact the prices, wholesale prices,
15 in California?

16 A. There have been assertions that some
17 individual plant operators took plants out. But
18 there are no assertions of which I am aware that it
19 was done collusively.

20 Q. Well, individually then aren't we saying
21 that one of the power generators negatively impacted
22 the market in the sense that by taking power off line

1 it increased the wholesale market prices?

2 A. I don't know who the we is in this.

3 Q. As I understand it, Ameren, some Ameren
4 plants, pulled power off the market for awhile which
5 impacted wholesale prices upward, isn't that correct?

6 A. No.

7 Q. Who did then?

8 A. The firm that comes to mind specifically
9 was that on one day in the spring of 2000 Reliant is
10 supposed to have done that.

11 Q. And what happened to market prices?

12 A. I don't recall.

13 Q. But didn't the wholesale market prices go
14 up?

15 A. I don't recall.

16 Q. Well, did they go down?

17 A. I don't recall.

18 Q. But isn't that an example of one bidder
19 negatively impacting the market one way or the other?

20 A. I don't know how to go any further than
21 this. I don't remember the facts.

22 Q. All right. Now, in terms of the companies

1 that don't own power, the baby bidders, what do they
2 need to comprise them? What do they need to do in
3 order to be a bidder? In other words, what kind of
4 package are they going to be putting together?

5 A. My understanding of the auction, and it is
6 only as a bystander, is that these are going to be
7 like the New Jersey auction. They are going to be a
8 requirement slight. So they are going to know that
9 notionally they are going to be wanting to sell
10 power. Some of which will be priced at base-load
11 prices, some of which will be priced at intermediate
12 prices, some at peaking prices.

13 Q. Okay, stop there for a second. If they are
14 putting a package together, you said part of it is
15 going to be base load prices, part of it is going to
16 be intermediate and other is going to be peak, right?

17 A. Yes.

18 Q. And you understand the way it is sliced up
19 here it is, I think, 50 megawatts per tranche the way
20 it has been, I think the last proposal, is that
21 correct?

22 A. I don't know.

1 Q. Well, let's assume it is. Then of that 50
2 megawatts that might be a slight, what percentage of
3 that may consist of base load power?

4 A. I have not studied it. Given that base
5 load mileage is running 24/7, I would guess in the
6 neighborhood of half, perhaps more.

7 Q. Okay. And intermediate, what percentage of
8 that will constitute the package being put together?

9 A. Virtually all of the remainder.

10 Q. Okay. And how about peak?

11 A. Minuscule amount.

12 Q. And of the three base load pricing, that's,
13 well, Exelon Generation through its nuclear plants
14 basically puts out base load power, does it not? I
15 already asked that. Let me ask it differently. That
16 was poorly phrased.

17 Of the three which wholesale prices are cheaper

18 A. Base load. I would assume you are talking
19 in charges per megawatt hour.

20 Q. Absolutely. And how about what's the most
21 expensive?

22 A. Peaking.

1 Q. So if this portfolio we are putting
2 together you are saying that 50 percent base load
3 price which is the least expensive of the three
4 components, is that correct?

5 A. I am listening.

6 Q. Well, that was the question.

7 A. I am not sure I have the question yet.

8 Q. All right. I will say it again. Of the
9 three components that we just identified, pays load,
10 intermediate and peak, at least 50 percent of that is
11 base load which of the three is the cheapest per
12 megawatt, dollars per megawatt per hour, is that
13 correct?

14 A. Yes.

15 Q. And the very most expensive which is peak
16 is a minuscule percentage of that total package,
17 isn't that correct?

18 A. In this area in the next few years, yes.

19 MR. ROSEN: Nothing further.

20 JUDGE WALLACE: When you say this area, you
21 mean northern Illinois?

22 WITNESS Hieronymus: The Midwest generally,

1 Your Honor.

2 JUDGE WALLACE: Any recross, Ms. Hedman?

3 MS. HEDMAN: No.

4 EXAMINATION

5 BY JUDGE WALLACE:

6 Q. Dr. Hieronymus, would you tell me what you
7 mean by load pocket?

8 A. Yes, Your Honor. This is a term I think
9 came out of New York originally. And it refers to an
10 area which is constrained such that no additional
11 generation can come in.

12 Q. And what do you mean by a binding
13 constraint?

14 A. The word "binding" probably is, at least to
15 a non-transmission engineer, a redundant term. It is
16 just a constraint which isn't theoretic. It is real.

17 Q. Constraint meaning no generation can come
18 in?

19 A. No additional generation can come across
20 it, that's right.

21 Q. So the constraint is no generation can come
22 in; the low pocket is the area where it can't come

1 in?

2 A. Downstream of the constraints, that's
3 right, Your Honor.

4 Q. What is your definition of market power?

5 A. I can't improve on the official definition
6 which is the ability profitably to sustain a small
7 but significant increase in prices. That's the
8 language of the Justice Department and the Federal
9 Trade Commission.

10 Q. And then why do you or what is wrong with
11 behavioral modeling in studying potential market
12 power?

13 A. Well, behavioral modeling has at least two
14 really serious problems with it, just as a technical
15 matter.

16 Q. And those are?

17 A. The first is you need in order to actually
18 do it, you need to have an iron-bound market. You
19 are either in it or out of it. There is no shades of
20 gray. There is no sometimes in, sometimes out. And,
21 second, behavior models are always based on a
22 conjecture about behavior. And typically behavioral

1 models make an assumption which is that I know how my
2 competitors -- I have perfect information about the
3 market and I know exactly how my competitors will
4 respond to what it is I do. And that's just not
5 realistic.

6 Q. And the reverse of that, why is structural
7 modeling better?

8 A. Well, structural modeling was invented to
9 deal with oligopolus situations. Prior to structure
10 modeling or prior to the current version of
11 structural modeling which dates mostly from 25 years
12 ago, people worried monopolies. They worried about
13 independent behavior, not collusive behavior, and I
14 don't mean illegal collusive behavior. I mean
15 tacitly collusive behavior all in all. Anti-trust
16 experts, legal and economic, concluded that what was
17 important in looking at markets, particularly in the
18 context of changes in markets arising from mergers
19 and acquisitions was this, the structure of the
20 competitors. Because if you get concentrated
21 markets, you are going to have a greater tendency for
22 tacitly collusive behavior than if you have

1 unconcentrated markets. And so since oligopoly
2 behavior was the primary thing they were worried
3 about because it is legal, they focused on structure.
4 But structure in turn tells you a lot about the
5 ability to actually do the kind of behavioral
6 activities the behavioral model tries to model
7 directly.

8 Q. All right. Thank you. You used the phrase
9 "market rate authority"?

10 A. Yes.

11 Q. What do you mean by that?

12 A. It's a federal, it's a FERC issue. And a
13 seller either has the ability to sell at market
14 prices or they don't. Most people, most places have
15 market rate authority. They have the right to sell
16 their power at market. In some cases they don't.

17 Q. In what cases do they not?

18 A. There are a few cases where either the
19 owner has conceded or FERC has found that they are so
20 dominant or the market is so uncompetitive that they
21 would be able to abuse market rates in selling at
22 wholesale. One example that comes to mind is Florida

1 where there are only two large sellers and very
2 little transmission, almost none of it available.
3 AEP has recently accepted the loss of its market rate
4 authority in the old central and southwest territory.
5 There are probably a few others, but those are the
6 ones that come to mind.

7 Q. All right. And then you make a statement
8 -- well, precisely it's on page 26 of your rebuttal
9 at line 530. The more that plant earns in energy
10 markets, the less it needs to recover from the
11 capacity market, and capacity prices will reflect
12 this. I wonder if you could maybe elaborate on that.
13 What is the difference between the energy market and
14 the capacity market?

15 A. We need -- the energy market is pretty
16 straight forward. Capacity markets are rules driven.

17 Q. By FERC or the RTO?

18 A. Yes, by either the reliability region or by
19 an RTO. The reliability region, let's take the first
20 case which is right now not very different than PJM
21 or the Midwest ISO. Their load serving entities have
22 a lawful requirement to have to match the

1 entitlements equal to a hundred and some odd percent
2 of their peak load, typically in the range of 115
3 percent, and they have to acquire that somehow. RTOs
4 are different because you have to actually literally
5 post it in some sense. But NERC regions are not very
6 different from that. They want to know that you have
7 actual capacity that you can call upon.

8 Now, capacity is a funny product. It is the
9 ability to produce energy but it isn't energy. I
10 don't turn on a light switch and get capacity. So it
11 exists because it is required for reliable operation.
12 Think, Your Honor, about a generator that in the
13 first instance makes nothing in the energy market.
14 Now, why are they going to stay around? Why aren't
15 they going to shut the plant? Only because somebody
16 pays them for the capacity.

17 So generally speaking in markets today the value of
18 capacity is set on the basis of what I need to earn
19 from the capacity market in order to stay in
20 business.

21 Now, if to change my example I start making
22 money in the energy market and all of the other

1 owners of capacity start making money in the energy
2 market, the amount that I need to stay in business is
3 going to be less. And there is -- and here I am
4 going to -- I am probably going to have difficulty
5 with it. You can think about supply for capacity as
6 being what it costs to keep open because that varies
7 by kind of unit minus the energy markets that it
8 gets. And some people may need 30 and 40 dollars a
9 kilowatt a year and some people need negative amounts
10 because they are making more than enough in the
11 energy market.

12 If you think of that as a supply curve of
13 capacity and you say what's the price that gives me
14 the 115 percent of load, that might be in the -- if
15 energy margins are low that might be 25,000 kilowatts
16 a year. If people start making more money in energy,
17 the supply curve is going to shift and it might be
18 \$10 a kilowatt year. Now, all of that gets
19 formalized in New York now and what Pegram is
20 proposing because they are actually going to
21 calculate how much you need to get, given what a unit
22 is going to get from the energy market or from the

1 RTO from capacity, and that's what determines the
2 capacity price off of which, with some other
3 adjustments, the capacity price is based

4 Q. Thank you. Your resume' says that you have
5 been helping PG&E with their bankruptcy.

6 A. I did at one point, yes.

7 Q. Sort of in relation to one of Mr. Rosen's
8 questions, weren't some of the contracts that PG&E
9 signed in California, weren't those -- those were not
10 collusive contracts with the emergent generators;
11 they were just bad contracts, they were high
12 contracts?

13 A. Well, I think you have got the facts
14 probably wrong, if you don't mind my saying so. PG&E
15 was bankrupt. They wouldn't sign any contracts.

16 Q. They had already signed them, right?

17 A. Well, PG&E hadn't signed any contracts.
18 What I think you are referring to, Your Honor, is the
19 contracts that were signed by the California
20 Department of Water Resources to provide power to
21 serve the customers of Edison and PG&E because
22 neither Edison nor PG&E were creditworthy because

1 they had been -- they had frozen rates and they had
2 rising power costs. So those are the contracts I
3 think you are referring to.

4 Q. I was just reading your resume' and I guess
5 maybe that's a further explanation. PG&E was not a
6 buyer?

7 A. No, they were not.

8 JUDGE WALLACE: All right. Thank you.

9 A. They were bankrupt.

10 JUDGE WALLACE: Thank you, Dr. Hieronymus. You
11 may step down.

12 A. Thank you, Your Honor.

13 (Witness excused.)

14 JUDGE WALLACE: Let's go off the record.

15 (Whereupon there the
16 hearing was in recess
17 for lunch until 1:10
18 p.m.)

19

20

21

22

1 AFTERNOON SESSION

2 (Whereupon the proceedings
3 were stenographically reported
4 by Jami Tepker.)

5 JUDGE WALLACE: Your next witness, Mr. Rippie?

6 MR. RIPPIE: The Company's next witness is
7 Mr. Steven Naumann.

8 Mr. Naumann has already been sworn.

9 STEVEN NAUMANN

10 called as a witness on behalf of Commonwealth Edison
11 Company, having been previously duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RIPPIE:

15 Q. Mr. Naumann, could you please spell your
16 full name for the court reporter.

17 A. Steven, S-t-e-v-e-n, Naumann,
18 N-a-u-m-a-n-n.

19 Q. Mr. Naumann, have you prepared or caused to
20 be prepared under your direction and control
21 surrebuttal testimony for submission to the Illinois
22 Commerce Commission in Docket 05-0159?

1 A. Yes, sir.

2 Q. Has that testimony been designated
3 Commonwealth Edison Exhibit 23.0?

4 A. Yes, sir.

5 MR. RIPPKE: For the record, Your Honor, that
6 was filed on e-Docket on August 19th, Batch Number
7 61487.

8 Q. Mr. Naumann, do you have any corrections or
9 updates to Exhibit 23.0?

10 A. Yes. I have one correction and one update.

11 Q. What is the correction?

12 A. Correction is on page 12, line 258, the
13 fourth word says two. It should be three.

14 And I have an update that follows the
15 answer on lines 597 to 603. After I filed the
16 surrebuttal, the Citizens Utility Board filed a
17 motion to intervene in the dockets that I was
18 referring to.

19 Q. With the exception of those two or that
20 correction and that update, if I asked you the same
21 questions that appear on Exhibit 23.0, would you
22 give me the same answers?

1 A. Yes, sir, I would.

2 Q. Did you also prepare rebuttal testimony for
3 submission to the Commission in this docket?

4 A. I did, sir.

5 Q. Has that been designated Commonwealth
6 Edison Exhibit 14.0 with two appended exhibits, 14.1
7 and 14.2?

8 A. I assume the exhibit numbers are correct.
9 14.0 is the rebuttal and there were two exhibits
10 attached to it.

11 MR. RIPPIE: Yes.

12 Your Honor, that was filed on July the 6th,
13 2005, e-Docket Batch Number 60092.

14 Q. Mr. Naumann, do you have any updates or
15 corrections to note with respect to Exhibit 14.0?

16 A. I have one update.

17 On page 20 in the answer covering lines 425
18 through 429, yesterday, August 31st, PJM filed its
19 RPM proposal with FERC.

20 Q. Except as updated by that answer or as
21 updated by the surrebuttal testimony, if I asked you
22 the questions that appear on Exhibit 14.0, would you

1 give the same answers to that?

2 A. Yes, sir, I would.

3 Q. Did you also prepare the prepared direct
4 testimony for submission to the Commission?

5 A. I did.

6 Q. Is that designated ComEd Exhibit 5.0 with
7 an appended Exhibit 5.1?

8 A. Yes, it is.

9 MR. RIPPIE: Your Honor, that was filed on
10 February 25, 2005, under e-Docket Batch 55889.

11 Q. Do you have any corrections or updates to
12 that testimony?

13 A. I do not.

14 Q. Subject to the surrebuttal and rebuttal
15 testimonies, if I asked you the same questions that
16 appear in Exhibits 5.0 and 5.1, would you give me
17 the same answers today?

18 A. Yes, sir, I would.

19 MR. RIPPIE: Your Honor, that's all the
20 questions I have for Mr. Naumann.

21 And at this time I would offer ComEd
22 Exhibits 5.0, 5.1, 14.0, 14.1, 14.2, and 23.0 into

1 evidence.

2 JUDGE WALLACE: Any objection?

3 Hearing none, ComEd Exhibits 5.0, 5.1,
4 14.0, 14.1, 14.2, and 23.0 are admitted.

5 (Whereupon ComEd Exhibits 5.0,
6 5.1, 14.0, 14.1, 14.2, and 23.0
7 were admitted into evidence.)

8 MR. RIPPIE: Thank you.

9 JUDGE WALLACE: It looks like we have a few
10 people signed up for cross.

11 Who wishes to begin?

12 MS. HEDMAN: I'd be happy to.

13 JUDGE WALLACE: All right. Thank you. Go
14 ahead.

15 CROSS-EXAMINATION

16 BY MS. HEDMAN:

17 Q. Good afternoon, Mr. Naumann. I'm Susan
18 Hedman. I'm with the Attorney General's Office, and
19 I'm representing the People of the State of Illinois
20 in this docket.

21 I'd like to start with your definition of
22 market power. What is your definition of market

1 power?

2 A. First I need to preface that that that's
3 not my area of expertise.

4 The definition of market power that
5 Dr. Hieronymus gave earlier on the stand is what I
6 understand the conventional definition of market
7 power to be.

8 JUDGE WALLACE: You did. Thank you very much.
9 But we have a new court reporter. So when you
10 begin, if you're going to say anything, please
11 identify yourself. Thank you.

12 MS. HEDMAN: Q. Can market power exist in the
13 absence of transmission constraints?

14 A. I haDn't given that all that much thought.
15 I think in certain products it probably could.

16 Q. And what would those products be?

17 A. I think the classic example would be
18 production of reactive power, ancillary service for
19 reactive power. It may be for certain other
20 ancillary services.

21 I suppose you could have a small enough
22 isolated market such as Texas that you could have

1 market power throughout all of Texas in theory.

2 This is pretty hypothetical.

3 Q. On page 16 of your direct testimony you
4 talk about locational marginal pricing in PJM. And
5 I believe you say that the data show that the
6 Northern Illinois zone largely because of lack of
7 transmission constraints enjoys among the lowest
8 LMPs in PJM.

9 Indeed, during some hours LMPs in Northern
10 Illinois are materially lower than LMPs in eastern
11 areas of the PJM.

12 Could you indicate in the Northern Illinois
13 zone what in the off peak would be a typical LMP?

14 A. I haven't looked at the data lately, and I
15 don't know what typical means. You'd have to tell
16 me what month. You'd have to show me the data.

17 JUDGE WALLACE: Speak into the microphone,
18 please.

19 THE WITNESS: I just don't have the data in
20 front of me to answer that question directly.

21 MS. HEDMAN: Q. Well, can you comment on the
22 extent of the difference between the LMPs in

1 Northern Illinois and in the rest of the PJM?

2 When you say materially lower, is the LMP
3 in the eastern part of the PJM high average twice as
4 high as the LMP here?

5 A. You're saying over a long period of time or
6 in a given hour? There may be specific hours or
7 specific very short periods of time it may well be
8 twice as high.

9 There's a material difference of the number
10 of dollars. But without having the data in front of
11 me, I can't tell you how many dollars per megawatt
12 hour.

13 Q. So you don't know what you had in mind when
14 you said that they're materially lower?

15 A. Yes. It was consistently lower by
16 something other than a trivial number.

17 Q. Mr. Naumann, I'm showing you what everyone
18 here has seen marked as AG Cross Exhibit 8. Now,
19 this exhibit, of course, deals with forward prices.

20 But in terms of the range of difference
21 between the LMPs that you're talking about, is this
22 on the order of the kind of material difference that

1 one sees between Northern Illinois numbers and
2 numbers in the rest of the PJM?

3 A. Do you have a color copy, per chance?

4 Q. I don't.

5 A. I believe -- it looks like it was done in
6 color and --

7 Q. It was done in color.

8 A. I don't know where this data came from,
9 first of all. I obviously don't even know what it
10 is.

11 You've handed me two pieces of paper that
12 purport to be the presentation of Exelon Public
13 Service. I've never seen it before in my life. I
14 guess that was redundant. I'm sorry.

15 Q. Mr. Naumann, I didn't ask you if you'd ever
16 seen it before. I asked you if the --

17 A. I understand. But I can't --

18 JUDGE WALLACE: Mr. Naumann, do not argue with
19 the counsel. Just answer the questions. We'll get
20 along a lot better this afternoon.

21 THE WITNESS: I'm going to make some
22 assumptions that the lightest line appears to be New

1 England. And I'm having a tough time.

2 If you could help me, is the middle line
3 MidAtlantic?

4 Q. Yes, it is.

5 A. Okay. Well, assuming MidAtlantic refers to
6 eastern PJM, then I would say the difference between
7 Northern Illinois, which I assume refers to the
8 Northern Illinois zone, and MidAtlantic is on the
9 order of magnitude that I had in mind.

10 Q. All right. Thank you.

11 You updated your rebuttal testimony with
12 respect to the PJM RPM. And I'm wondering, did
13 Commonwealth Edison or Exelon have a role in
14 developing the proposal that was filed at FERC?

15 MR. RIPPIE: I hate to object, but can you
16 split those two up?

17 MS. HEDMAN: Certainly.

18 Q. Did Commonwealth Edison have a role in
19 developing the proposal that was filed at FERC?

20 A. If by role you mean were we one of the
21 stakeholders that provided input -- was ComEd one of
22 the stakeholders that provided ComEd some input to

1 PJM, the answer is yes. That was our sole role.

2 We did not have any into the proposal. We
3 did not know what was going to be filed, however, or
4 when it was going to be filed.

5 So I'm trying to differentiate between the
6 stakeholder process at ComEd and back and forth and
7 actually having any input into the filing itself.

8 Q. Now, when you answered that question, you
9 said our role. And the question was about ComEd,
10 and I see that your position with the company is as
11 vice-president of wholesale market development of
12 Exelon.

13 Do you also have a title and a role at
14 ComEd?

15 A. I do not.

16 Q. And is your position part of the Exelon
17 Services Company, the service company?

18 A. I am in the corporate center. My employer
19 is Exelon Business Services.

20 MS. HEDMAN: Exelon Business Services. Thank
21 you.

22 I don't think I have anything further.

1 Thank you.

2 THE WITNESS: Thank you.

3 JUDGE WALLACE: Mr. Rosen.

4 CROSS-EXAMINATION

5 BY MR. ROSEN:

6 Q. What do you do as the wholesale market --
7 vice-president of wholesale market development?

8 What are you responsible for?

9 A. I've got a number of responsibilities. One
10 is for national development of markets. One has to
11 do with RTO implementation. That's mostly done with
12 respect to PJM.

13 I've got some other responsibilities with
14 respect to reliability. I've got -- serve on
15 positions with the North American Electric
16 Reliability Council in Maine where I represent -- I'm
17 sorry. At Maine I represent ComEd. At NERC I
18 represent Maine.

19 Coordination of various FERC filings both
20 on markets and on other matters and representation
21 in testimony litigation at FERC and occasionally
22 testifying in front of the Illinois Commission.

1 Q. Okay. I didn't hear all your answer that
2 well, but how many times have you done something as
3 vice-president also market development where you
4 were acting on behalf of ComEd?

5 A. Most of my time is either charged -- if you
6 exclude the time that's charged to the general
7 corporate function, most of my time is charged to
8 ComEd.

9 Q. Okay. The time that you're spending here
10 today are you charging that to ComEd?

11 A. Yes.

12 Q. In your position as wholesale
13 market -- vice-president of wholesale market
14 development, do you ever in that capacity sell
15 electricity through the wholesale markets?

16 A. I do not.

17 Q. To your knowledge, is Exelon Generation
18 planning to submit a bid -- or excuse me.

19 To your knowledge, does Exelon Generation
20 plan to bid in the auction that's part -- which is
21 really the essence of this proceeding?

22 A. I have no knowledge of Exelon Generation's

1 plans for this auction or for any other action.

2 Q. Okay. Do you know at Exelon Generation who
3 was going to be part of that process, assuming that
4 Exelon Generation does decide to be a bidder?

5 A. I would assume Mr. McClain and the people
6 working for him. I don't know specifically who at
7 Exelon Generation would be making those decisions.

8 Q. You talked about some of your
9 responsibilities being involved with the PJM market
10 or PJM RTO. Is that correct?

11 A. That's correct.

12 Q. Okay. And can you describe what your
13 responsibilities are regarding the PGM RTO?

14 A. Well, now that we're integrated, my major
15 piece is over. There are various rules and
16 agreements that are continually being negotiated.

17 My biggest function involving PJM right now
18 is to try to obtain for Commonwealth Edison and Peko
19 to a smaller extent the revenues that they have lost
20 through the elimination of the out and through rates
21 between MISO and PJM so that they could be credited
22 back to the network customers.

1 That's -- of all the things at PJM, that
2 takes most of my time.

3 Q. Okay. Can you explain that a little
4 further? Why was it that ComEd and Peko lost that
5 money as a result of the situation between MISO and
6 PJM?

7 A. Because FERC issued an order eliminating
8 the out and through rates between PJM and MISO
9 effective December 1, 2004.

10 Q. And what were those out and through rates?
11 What are they?

12 A. It was the charge that ComEd prior to the
13 integration of PJM and PJM following ComEd's
14 integration of PJM would charge a transmission
15 customer who was located in ComEd slash PJM to sell
16 out of PJM into MISO.

17 It was on the order for ComEd before they
18 joined PJM of \$60 million a year.

19 Q. Okay. Just out of curiosity, you're
20 certainly aware of the catastrophe that hit
21 Mississippi and Louisiana over the past couple days,
22 are you not?

1 A. Absolutely.

2 Q. And I saw something in the Wall Street
3 Journal that talked about how some of the producers
4 or deliverers of natural gas were affected by that
5 hurricane.

6 Do you remember reading that in the
7 newspaper in the Wall Street Journal?

8 A. I actually remember seeing it on TV or
9 on -- I read the paper on the Internet, but yes.

10 Q. Does that have any impact on PJM prices, if
11 you know?

12 A. The truth is I haven't checked the PJM
13 prices for the last couple of days, but I would
14 assume that it's affected the price of gas-fired
15 generation.

16 Q. In what way?

17 A. I would assume that it would raise the
18 price of gas-fired generation temporarily.

19 Q. On the PJM markets?

20 A. I would assume all over the country.

21 Q. Including the PJM markets?

22 A. Yes. When gas was online, yes.

1 Q. Do you know whether any nuclear-generated
2 electricity has been affected at all by the
3 catastrophy that occurred down south?

4 A. I don't know for a fact. I do know that
5 when there is a certain point when a hurricane is
6 near an area with nuclear plants they're required to
7 shut down. That's a routine thing.

8 The actual status of plants down in the
9 south the Gulf Coast, I don't know for a fact what
10 they are.

11 Q. You haven't heard of any nuclear facilities
12 having to shut down as a result of a hurricane
13 approaching or then hitting?

14 A. I have not personally heard, but I do know
15 that there are rules that when a hurricane
16 approaches within a certain distance or something,
17 they must shut down as a precaution temporarily and
18 then they come back up after the hurricane.

19 As far as the status of any specific plant
20 yesterday or today or tomorrow, I simply don't know.

21 Q. Do you know whether any of the bidders or
22 any bidders would use PGM prices in any way in

1 formulating a bid that they may submit in this
2 auction process that is the subject of this hearing?

3 A. I don't know exactly what any bidder would
4 use to formulate their bid. I assume based on my
5 general knowledge that they would use their forecast
6 of what market prices would be at the time they have
7 to deliver them.

8 Q. Okay. And would that forecast include
9 looking at PGM prices?

10 A. Again, I don't do that type of thing. But
11 they have -- general bidders have various models
12 that have inputs into it that they take various
13 things and presumably prices, longer-term average
14 prices, yearly price, maybe one of those things and
15 somehow they try to figure out what the price will
16 be over the next five years.

17 I suppose that's one piece of information
18 they may use. But exactly how they use it and the
19 weight any particular bidder gives to it you would
20 have to ask the bidders how they do that.

21 Q. So I'm not quite certain I got your answer
22 completely. But are you saying that it could be

1 that by preparing these forecasts, they may take a
2 look at PJM prices over a period of time and decide
3 or determine what that average might be in factoring
4 what their bid might be in part?

5 A. They may -- one of the inputs might be
6 existing prices as a point of reference to attempt
7 to predict what future prices might be. That may be
8 an input.

9 Again, the weight and how they use that I
10 think generally is pretty proprietary to every
11 bidder as to whether they look at that or they look
12 only at very specific things. I don't know.

13 That's how I guess the free market works
14 and every bidder comes up with their number.

15 Q. Well, when you say existing prices, I just
16 want to know whether you meant PJM existing prices.

17 A. As I said, that may be one input. They may
18 also look at MISO prices. They may also look at
19 only certain hubs within PJM or within MISO.

20 Again, I think every bidder has their --
21 every person that is going to bid has their strategy
22 as to what they consider to be significant because,

1 again, what we're talking about here is the delivery
2 of a product I believe one, three, and five years in
3 advance.

4 And so they use various factors. And I
5 think we're in violent agreement that one of those
6 factors might be certain prices within PJM or it
7 might not. Depends on the bidder.

8 Q. Okay. And I think you've already stated
9 that -- you were shown a document by Susan here
10 which we know that you may not know was a result of
11 a slide presentation that was given by Exelon
12 Corporation in New York on August of 2005 to
13 shareholders.

14 Does that ring a bell to you at all? Does
15 that sound familiar? In other words, were you aware
16 that that slide presentation took place in New York
17 at or around that time?

18 A. Okay. I'm not trying to be argumentative.
19 The second piece of paper I received here says this
20 is something that took place in May. I know that's
21 not significant.

22 Q. That means I goofed, so I'll start over.

1 Okay. Let me ask it a different way, then. We make
2 mistakes too occasionally.

3 A. We're all human.

4 Q. All right. Were you aware that a, in fact
5 a slide presentation took place in New York in
6 August of 2005 given by Exelon Corporation to
7 shareholders?

8 Don't look at that document. I'm just
9 asking you generally.

10 A. I don't know -- the only thing I knew was
11 that my boss went to some and I don't know if it was
12 a shareholder meeting or if it was an analyst
13 meeting or some sort of meeting in August in New
14 York.

15 And if you tell me that a slide
16 presentation was posted on an official Exelon web
17 site, I would take that as true that that was
18 presented.

19 But specifically whether it was the
20 shareholders or to whom, I really honestly can't
21 tell you. I had no involvement in it.

22 Q. Okay. You said your boss went. Who is

1 your boss?

2 A. Betsy Moller.

3 Q. I just want to run by you some statements
4 that were made, see whether you agree with it
5 particularly because based on the testimony you
6 submitted here, you seem to know a lot about the PJM
7 markets.

8 At the August 2005 meeting on the Midwest
9 market dynamics, Exelon represented to its
10 shareholders that PJM has increased liquidity in
11 NIGA trading. Do you agree with that?

12 A. I will take your word that these are the
13 things that were actually --

14 Q. You're just going to have to trust me on
15 that one.

16 A. Okay. I will trust you --

17 Q. Okay.

18 A. -- that they're actually there.

19 Q. Yes.

20 A. I think that's --

21 Q. And actually, maybe I will show you.

22 A. No. I'll trust you that it's -- I was just

1 trying to say I've never seen the presentation. So
2 I'll be glad to comment on it.

3 Q. Okay. Would you agree with the statement
4 that was made that rising fuel prices and in
5 parentheses Central Appalachian Coal and Natural Gas
6 is pushing forward PJM NIGA prices higher?

7 A. I believe that's a correct statement.

8 Q. Okay. So based on your experience with the
9 PJM markets and the market dynamics here, have the
10 rising prices on PJM been caused primarily by
11 producers of electricity through coal and natural
12 gas?

13 A. Through Appalachian Coal and Natural Gas?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. I just have to ask you this question
17 because we've been asking all witnesses and I don't
18 want you to feel left out.

19 As an employee of Exelon, I'm assuming that
20 you have stock options with your company?

21 A. I have Exelon stock options, yes, sir.

22 Q. And those stock options are tied into the

1 stock of Exelon Corporation, are they not?

2 A. Yes. They're options in the stock of
3 Exelon, yes, sir.

4 MR. ROSEN: Okay. I have nothing further.

5 JUDGE WALLACE: Mr. Robertson.

6 MR. ROBERTSON: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ROBERTSON:

9 Q. Mr. Naumann, my name Eric Robertson. I
10 represent the Illinois Industrial Energy Consumers.

11 A. It's nice to see you again, Mr. Robertson.

12 Q. Always nice to see you, Mr. Naumann. Sorry
13 we always have to keep meeting like this.

14 A. Well, sometimes it's in Chicago also.

15 Q. Yes.

16 Could you explain for me the PJM
17 reliability pricing model that you reference at the
18 end of your surrebuttal testimony in response to
19 Mr. Dauphinais' testimony? And I think it is
20 page 32.

21 A. If -- with the one comment that all that I
22 have seen last night was the 99-page transmittal

1 letter that was filed. And so I will try to --
2 there may be some intricacies that PJM changed since
3 I've last reviewed it that I may not get a hundred
4 percent correct.

5 And if you would excuse me for that, I --
6 if it changes, we can try to correct that. But I
7 think I can explain the general outline, which I
8 think was your question.

9 Q. That's correct.

10 A. What PJM filed was a new capacity construct
11 in order to assure capacity to reliably serve all
12 the load within PJM.

13 My understanding of the filing is it
14 contains roughly five major pieces. It contains a
15 four year forward procurement. It contains what's
16 called -- what PJM refers to as a variable resource
17 requirement in the vernacular called the demand
18 curve.

19 It contains a locational-capacity
20 requirement or evaluation. It contains something
21 for operability due to a concern that there needs to
22 be sufficient generation, maneuverable generation

1 for load following.

2 And it contains some market mitigation
3 within it. I think those are the basic elements of
4 the plan. My understanding from the filing is that
5 PJM is asking for approval so that it could go into
6 effect June 1, 2006.

7 Q. Now, would you agree or disagree with the
8 statement that the reliability pricing model
9 introduces the central procurement of capacity into
10 the PJM market by PJM?

11 A. I would agree with that subject to the
12 proviso that self-supply is integrated within that
13 process, but it is a centralized procurement.

14 Q. All right. What -- explain to me what you
15 mean by self-supply?

16 A. In other words, if an entity has capacity
17 to serve its load -- and again, you're getting me
18 not having read very well the entire filing.

19 My understanding is the entity can bid in
20 the generation and then essentially it will receive
21 the clearing price for that generation, which will
22 offset the cost, the charge the PJM charges it for

1 capacity.

2 So in effect, while it goes through the
3 central procurement, it becomes an offset where it
4 -- the load pays PJM the money, and PJM takes the
5 money and pays it back to its generation.

6 That's what I meant by integrating
7 self-supply into the centralized procurement.

8 Q. So the suppliers will have the choice of
9 whether or not they wish to bid into the market or
10 self-supply?

11 A. Well, it's really the load that would
12 self-supply, Mr. Robertson.

13 Q. Okay.

14 A. So a load that owns or controls or is
15 contracted for generation -- I think I would state
16 it this way, Mr. Robertson.

17 A load would have a choice of having
18 generation bid in either for it or by itself that
19 would be self-supply or simply saying they would
20 take the clearing price. It would be their choice.

21 Q. All right.

22 A. I think that -- I tried to answer the

1 question.

2 Q. All right. Now, will PJM members who serve
3 load within the PJM RTO have any other choice with
4 regard to how they meet the capacity requirements of
5 PJM other than participation in this auction process
6 other than participation in the RPM?

7 A. My understanding is, again, subject to the
8 ability to supply through our RPM, the answer is
9 no. They will -- if your load in PJM, you will be
10 charged for capacity.

11 Q. All right. Now, I also -- so does that
12 mean that RPM capacity requirements could be
13 acquired by bidders into the ComEd auction and that
14 they could include the price of that capacity in
15 their bid?

16 A. I'm trying to follow the lines here. If I
17 understand the question, Mr. Robertson, a bidder
18 into the auction could itself obtain capacity
19 rights.

20 It could independently bid that capacity
21 into the auction, assuring itself that if it bids
22 below the clearing price of receiving the clearing

1 price. It then -- if the load is serving the load,
2 it would be charged by PJM the clearing price.

3 So it presumably would take -- it would in
4 effect be able to hedge its capacity obligation
5 within its bid and take that into account.

6 Q. All right. So --

7 A. It's -- there are kind of lines going
8 different ways, but I think that's the best way to
9 explain that.

10 Q. Okay. If I understand correctly, whatever
11 that process is, whatever mechanism they use to do
12 that could be reflected or probably would be
13 reflected into whatever bid price they put into the
14 ComEd auction, the cost of doing all the, meeting
15 all the different lines?

16 A. The cost of capacity, whether in effect
17 self-supplying or whether using a number that came
18 out of there and simply accepting it, I assume would
19 be part of the bid price, yes, sir.

20 Q. And that would be true -- well, the other
21 thing I wanted to ask you about was whether or
22 not -- I notice in your qualifications that you

1 spend a lot of time working for ComEd in relation to
2 FERC proceedings and FERC litigation. Is that
3 correct?

4 A. Yes. Yes, I have.

5 Q. And is it true to say that in many
6 instances what is proposed to FERC is often modified
7 by the FERC such that what was originally proposed
8 is changed and different terms and conditions?

9 A. Yes. With respect to RPM, it is a
10 proposal.

11 Q. All right. And so you would agree that the
12 RPM proposal could be modified by the FERC in the
13 context of the proceeding that was initiated
14 yesterday?

15 A. That's correct.

16 MR. ROBERTSON: I have nothing further.

17 JUDGE WALLACE: Thank you.

18 Anyone else have cross-examination of
19 Mr. Naumann? There's a few others listed, but they
20 don't appear to be here today. All right.

21 Any redirect?

22 MR. RIPPPIE: No, Your Honor. Thank you.

1 MS. HEDMAN: Your Honor, I would like to move
2 the admission of AG Exhibit -- Cross Exhibit 8 for
3 the purpose of being able to indicate that the
4 witness agreed to a particular order of magnitude to
5 define what he meant by materially different.

6 MR. RIPPIE: Your Honor, I object to the
7 admission because that would make it substantive
8 evidence.

9 It is a marked exhibit and the illustration
10 of the magnitude that he agreed with would certainly
11 be part of the record. I don't have any problem
12 with this being illustrative.

13 But admitting it into evidence makes this
14 substantive evidence citable for the truth of the
15 matter. And I do have a problem with that.

16 We don't know what the definitions are. We
17 don't know what the data set is. We don't -- you
18 know, all the normal problems. There's simply no
19 foundation.

20 MS. HEDMAN: In the alternative, would it be
21 appropriate for the witness to indicate -- by my
22 calculation, this is showing that prices in Northern

1 Illinois or the prices in the MidAtlantic are about
2 50 percent higher than in Northern Illinois.

3 MR. RIPPIE: MY suggestion would just be it
4 will be -- how about we do it this way? If this is
5 being admitted for the sole and limited purpose that
6 Ms. Hedman just represented, I have no objection.

7 JUDGE WALLACE: Is that all right with you,
8 Ms. Hedman?

9 MS. HEDMAN: That's fine with me.

10 JUDGE WALLACE: All right. AG
11 Cross-Examination Exhibit Number 8 will be admitted
12 for the limited purpose as just stated by Ms.
13 Hedman.

14 (Whereupon AG Cross
15 Exhibit 8 was admitted
16 into evidence.)

17 MS. HEDMAN: Thank you, Your Honor.

18 JUDGE WALLACE: Exhibit 14.1 is a rather large
19 document of the Joint Operating Agreement and then
20 14.2 is PJM Coordinated Flow --

21 MR. RIPPIE: Yes, Your Honor.

22

1 CROSS-EXAMINATION

2 BY JUDGE WALLACE:

3 Q. Mr. Naumann, what did you say that PJM and
4 MISO did yesterday? Did you correct something in
5 your testimony?

6 A. I had two corrections, Your Honor. One was
7 on the PJM filing of RPM, and the other had to do
8 with a -- with something in my surrebuttal on --

9 Q. Right. What did PJM file?

10 A. PJM filed their proposed new capacity
11 market plan called Reliability Pricing Model or RPM.

12 Q. And is that what you were saying you hadn't
13 read through?

14 A. I have scanned through the 99-page
15 transmittal letter last night. Your Honor, up until
16 now we had various proposals.

17 But until yesterday we didn't know what
18 actually the PJM board had approved to go ahead and
19 file with FERC. So that's the latest document, the
20 one that's in play now.

21 Q. It's only what they filed with FERC. It's
22 not been approved by FERC?

1 A. That's correct, yes, sir.

2 JUDGE WALLACE: All right. Thank you.

3 You may step down, Mr. Naumann.

4 MR. NAUMANN: Thank you very much, Your Honor.

5 (Witness excused.)

6 JUDGE WALLACE: Mr. Rippie?

7 MR. RIPPIE: Your Honor, if we could just have

8 about two minutes. We're changing lawyers here.

9 JUDGE WALLACE: Okay. Let's go off the record.

10 (Whereupon there was then

11 had an off-the-record

12 discussion.)

13 JUDGE WALLACE: Back on the record.

14 MR. HANZLIK: Ask Dr. Hogan to take the stand.

15 DR. WILLIAM HOGAN

16 called as a witness on behalf of Commonwealth Edison

17 Company, having been previously duly sworn, was

18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HANZLIK:

21 Q. Sir, would you please state your full name,

22 spelling your last name.

1 A. My name is William Hogan, H-o-g-a-n.

2 Q. Mr. Hogan, what is your position?

3 A. I'm a professor at the Kennedy School of
4 Government at Harvard University.

5 Q. All right. Mr. Hogan, I want to show you a
6 document which entitled Direct Testimony of William
7 W. Hogan.

8 It has been marked as ComEd Exhibit 8.0,
9 and attached to that exhibit is an Exhibit 8.1. Do
10 you have those documents in front of you?

11 A. Yes, I do.

12 Q. Okay. This testimony and exhibit were
13 marked as e-Docket Number 55889 and filed with the
14 Commission on February 25, 2005.

15 Dr. Hogan, are there any changes or
16 corrections which you wish to make in your prepared
17 direct testimony?

18 A. No.

19 Q. If I were to ask you the questions that are
20 contained in Exhibit 8.0, would your answers be the
21 same?

22 A. Yes.

1 Q. Are there any changes to Exhibit 8.1 to
2 your direct testimony?

3 A. No.

4 Q. Dr. Hogan, I would also direct your
5 attention to a document marked as ComEd Exhibit
6 16.0, which entitled the Rebuttal Testimony of
7 William W. Hogan.

8 That has been marked with e-Docket Number
9 60092 filed on July 6, 2005 and a corrected version
10 e-Docketed 61338 filed with the Commission on
11 August 16, 2005.

12 Do you have a copy of the rebuttal
13 testimony in front of you?

14 A. Yes.

15 Q. Are there any changes, corrections, or
16 additions which you wish to make in your rebuttal
17 testimony?

18 A. No.

19 Q. If I were to ask you the questions that
20 appear in this testimony today, would your answers
21 be the same as appear in that exhibit?

22 A. Yes.

1 Q. And I also would like to turn your
2 attention to a document which has been marked as
3 ComEd Exhibit 25.0, which is entitled the
4 Surrebuttal Testimony of William W. Hogan.

5 It has been marked with e-Docket Number
6 61487 by the Commission filed August 19, 2005. Do
7 you have a copy of that in front of you?

8 A. Yes.

9 Q. I want to direct you to the pagination on
10 that surrebuttal testimony. Is there any particular
11 typographical correction that you would like to
12 make?

13 A. Well, I believe -- I'm a little puzzled
14 about this because earlier I saw a version which I
15 think you had which said on the last page Page 27 of
16 28. And I looked on the last page of mine and it
17 says Page 27 of 27.

18 Q. I may have an earlier version, then. But
19 in any case, is it correct that the surrebuttal
20 testimony consists of 27 pages?

21 A. That's correct.

22 Q. Okay. If I were to ask you the questions

1 that are contained in your surrebuttal testimony,
2 would your answers be the same?

3 A. Yes, they would.

4 MR. HANZLIK: At this time, Your Honor, I would
5 offer into evidence ComEd Exhibits 8.0 and 8.1,
6 16.0, 16.1 Corrected, and 25.0.

7 JUDGE WALLACE: Is 16.0 or 16.0 and 16.1 are
8 corrected versions?

9 MR. HANZLIK: Yes, that is correct.

10 JUDGE WALLACE: And 16.1 is some papers or
11 something? Is that what you --

12 THE WITNESS: Yes.

13 JUDGE WALLACE: Okay. Is there any objection?

14 Hearing none, the -- ComEd Exhibits 8.0,
15 8.1, 16.0 Corrected, 16.1 Corrected, and 25.0 are
16 admitted.

17 (Whereupon ComEd Exhibits 8.0, 8.1,
18 16.0 Corrected, 16.1 Corrected, and
19 25.0 were admitted into evidence.)

20 MR. HANZLIK: I have no further questions for
21 Dr. Hogan.

22 JUDGE WALLACE: Cross-examination of Mr. Hogan

1 or Dr. Hogan?

2 Mr. Neilan.

3 MR. NEILAN: Good afternoon and thank you, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. NEILAN:

7 Q. Good afternoon, Dr. Hogan. My name is
8 Paul Neilan with the law firm of Giordano & Neilan.
9 We're here representing the Building Owners and
10 Managers Association of Chicago.

11 Dr. Hogan, if I may refer you to ComEd
12 Exhibit 25.0, page 18, and in particular lines 390
13 to 394 -- correction, 392 to 394.

14 In your testimony at this section you
15 state, In the Latter approach bidders would not
16 continue to bid at prices significantly below the
17 expected market price but he -- this is again
18 referring to Dr. Laffer -- assumes they would.
19 And that is where his illusory savings come from.

20 How would a bidder figure out what you
21 refer to as his expected market price?

22 A. Well, it's the -- depends on what

1 assumptions you're making, I guess, about the amount
2 of information, but -- and degree of uncertainty.

3 But they would in principle be doing their
4 own forecasts and have forecasts from others about
5 what the market prices were.

6 They would probably develop forward market
7 trading and products that were similar to or even
8 identical to products here.

9 And then you could observe what the forward
10 market curves were, defining prices that people were
11 prepared to buy and sell forward in those markets.
12 And that would affect their own analysis.

13 Q. Is it your position -- is it your position
14 that each bidder in the auction would have the same
15 expected market price?

16 A. I would be surprised if they would have the
17 same expected market prices. I would expect that
18 there would be some differences in the views about
19 what was happening.

20 Q. You agree with at least the general
21 characterization of the bidders from some of the
22 other ComEd witnesses that the bidders in ComEd's

1 auction would be experts in price risk management,
2 electricity price hedging, and with significant
3 skills necessary for the assembly of complex supply
4 portfolios?

5 A. I missed out -- you were quoting something,
6 I thought, there? I didn't catch what you were
7 quoting.

8 Q. Some of the characterization of the typical
9 or expected bidder in ComEd's auction, the suppliers
10 who might be bidding in ComEd's auction would be
11 experts in price risk management and electricity and
12 the assembly of electricity supply portfolios?

13 A. I would think so, yes.

14 Q. Is it your position that every bidder in
15 the auction when they assemble their supply
16 portfolios would have the same supply components and
17 the same proportions and at the same costs?

18 A. No.

19 Q. Do you agree that some bidders may be, may
20 be more willing to accept a higher degree of risk in
21 supplying ComEd than other bidders' risk in terms of
22 putting together their own supply portfolio and that

1 price risk management function?

2 A. Yes.

3 Q. Would you agree that if every bidder going
4 into the auction had the same expected market price,
5 that would raise a substantial question of bidder
6 collusion?

7 A. Not necessarily in the abstract, no.

8 Q. I'm not sure what you mean by the
9 abstract.

10 A. Well, you didn't specify the conditions.
11 So suppose, for example, that they do develop a
12 liquid forward market and it was already being
13 widely traded so you would be able to immediately
14 offset the sale in the forward market.

15 I would expect the prices to be what the
16 forward market prices were. People wouldn't be
17 bidding and offering to sell here prices that were
18 materially different from the forward market price.

19 Q. And that would be for a full-requirements
20 product?

21 A. If we had the forward market developed in
22 this contract, yes.

1 Q. For the size of ComEd's load and you would
2 expect that a liquid market would develop for a
3 full-requirements product the nature of ComEd's
4 load?

5 A. I don't think the product is that you have
6 to purchase -- supply the entire load. You supply a
7 tranche. There could be a forward contract, forward
8 market for those tranches in different magnitudes.

9 Q. That would be a vertical tranche?

10 A. That's the way I believe it's defined, yes.

11 Q. So it's a representative slice of ComEd's
12 load?

13 A. Yes.

14 Q. And that would include base load,
15 intermediate, and peaking?

16 A. Yes.

17 Q. In the absence of a liquid forward market
18 -- strike that.

19 Is it your view that there is today or will
20 be by the time the auction occurs, that there would
21 be a liquid forward market for a full-requirements
22 product such as ComEd is dealing with in this

1 auction?

2 A. It's not something that I can predict and
3 guarantee. It wouldn't surprise me. We certainly
4 have experience with things like this developing in
5 the past.

6 Q. Well, let me break it in two. Does such a
7 market exist today, such a product exist today in
8 electricity markets?

9 A. Not that I know of.

10 Q. Okay. Would it be more likely that such a
11 product would develop only after ComEd has
12 implemented its auction and perhaps one or more
13 auctions have occurred?

14 A. I don't know. It could happen before. It
15 could happen after. It might happen never.

16 Q. But in the market that exists today, it
17 would be highly unlikely for bidders to go into the
18 market that exists today as you know it given your
19 experience and expertise, that bidders would arrive
20 or determine the same expected market price for
21 full-requirements product today?

22 A. I think it is unlikely.

1 MR. NEILAN: Thank you, Your Honor. I have no
2 further questions.

3 JUDGE WALLACE: Anyone else have cross of
4 Dr. Hogan?

5 You look very resigned, Mr. Rosen.

6 MR. ROSEN: I'm actually losing steam. No, I'm
7 not.

8 CROSS-EXAMINATION

9 BY MR. ROSEN:

10 Q. All right. Mr. Hogan, I'm Larry Rosen and
11 I represent the Citizens Utility Board.

12 How many times have you testified in a
13 proceeding before a state agent that regulates or
14 has some jurisdiction over utilities?

15 A. Well, I don't know the exact answer. I've
16 done it many times, but not hundreds.

17 Q. Okay. How about 50 times? At least 50?

18 A. It would surprise me if it was that large,
19 but it's not impossible. I'm getting older.

20 Q. And of those possible 50 times that you
21 have so testified, were you hired by someone to
22 testify in those proceedings?

1 A. I don't know that that's true in every
2 case, but normally that would be the situation.

3 Q. Normally being what? 99 percent of the
4 time? 95 percent of the time?

5 A. Well, I've -- I just don't know the
6 number. I haven't done this inventory, so. I mean,
7 I do a lot of things that are not formally
8 testifying, for example.

9 I go to workshop and panels that I get
10 invited to speak and things like that.

11 Q. Well, let's limit it to formal testimony if
12 that might help you. How many times have you
13 formally testified before a state agency?

14 A. I don't know the answer or anything other
15 than what I said before.

16 Q. Okay. Is this the same 50 times or so?

17 A. You said 50 and I said I'd be surprised if
18 it was that large.

19 Q. Right.

20 Would you be surprised if it was about 40?

21 A. I just don't know.

22 Q. Okay. Well, to the extent that you can

1 remember, then, I think you said you were hired by
2 someone and most of the time you were hired by
3 someone to so testify?

4 A. Yes.

5 Q. Okay. And who hired you most of the time?
6 Utility companies? Generators?

7 A. You're talking about in front of state
8 agencies?

9 Q. We'll get to the other jurisdictions.

10 A. Okay.

11 (Whereupon there was a
12 short pause in proceedings.)

13 JUDGE WALLACE: Back on the record.

14 Do you remember where you were, Dr. Hogan?

15 THE WITNESS: I think the question was about
16 who had hired me to testify in formal proceedings
17 before state agencies.

18 Certainly utility companies and it wouldn't
19 surprise me if some, now, in the case of electric
20 power generators, perhaps. And I don't know of --
21 trying to think of other cases that might have been
22 involving state agencies.

1 A lot of what I have done has been under
2 jurisdictions that I don't have distinguished in my
3 mind very well.

4 MR. ROSEN: Q. Okay. So more often than not
5 the people that hired you would be utility companies
6 or companies that generate power of some sort. Is
7 that a fair statement?

8 A. In front of state agencies?

9 Q. Yes.

10 A. Probably.

11 Q. Okay. And I'm assuming that you've
12 testified in formal proceedings before other types
13 of agencies?

14 A. Right. That's correct.

15 Q. And what types of agencies are they?

16 A. Well, the principal situation would be
17 federal regulators, the Federal Energy Regulatory
18 Commission or various kinds of litigations and
19 courts.

20 Q. Let's just take the testimony before
21 federal agencies.

22 A. Uh-huh.

1 Q. And how often have you done that?

2 A. Well, I don't know the precise number
3 again, but many times.

4 Q. Okay. And in those many times have you --
5 have you been hired by someone to testify?

6 A. Often.

7 Q. Okay. And what types of companies have
8 hired you to testify before these federal agencies?

9 A. Electric utilities, generators, state
10 regulators, state consumer representative in a
11 Maryland case.

12 Q. Is that one matter?

13 A. The Maryland Peoples Council case?

14 Q. Yes.

15 A. The case which completely transformed the
16 natural-gas industry, you mean?

17 Q. I don't know.

18 A. Just one, yes.

19 Q. Okay.

20 A. It's the only time I ever worked in the
21 Maryland Peoples Council. It was in the biggest
22 case they ever had.

1 Q. Your resume indicates that you were
2 involved in what's been described as a California
3 Gas Company matter of gas-price spikes experienced
4 at the California border from March 2000 through May
5 2001?

6 A. That's correct.

7 Q. What did that involve?

8 A. The -- what did the case involve?

9 Q. Yeah. What were the allegations? What was
10 the substance?

11 A. I don't remember everything. But broadly,
12 it was about the price increases in natural gas that
13 took place at the California border which had a big
14 impact on prices within California for natural gas
15 and also had an impact on prices in electricity in
16 2000 and early 2001.

17 Q. Okay. And what were the allegations made
18 there?

19 A. Well, there were so many parties involved
20 in this that I don't -- I mean, I -- it's hard to
21 think of an allegation that wasn't made.

22 But that the pipe lines manipulated the

1 market, that the buyers manipulated the market, that
2 the utilities manipulated the market, that the
3 nonutility buyers manipulated the market, that, you
4 know, everybody that you could think of.

5 Q. Were there any allegations that any of the
6 consumers manipulated the market?

7 A. Yes.

8 Q. Okay. Consumers being people who are going
9 to be buying electricity from Commonwealth Edison
10 like the residents of California --

11 MR. HANZLIK: Excuse me. Did you say
12 Commonwealth Edison?

13 MR. ROSEN: Like Commonwealth Edison. Right?
14 I didn't say of Commonwealth Edison. I was drawing
15 an analogy. But I'll restate it.

16 MR. HANZLIK: Thank you.

17 MR. ROSEN: Q. When you said consumers, were
18 there consumers, like, the people who were going to
19 buy electricity in Chicago for Commonwealth Edison,
20 not us specifically, but people like that, were they
21 accused of manipulating the prices in California?

22 A. Buying for Commonwealth Edison?

1 Q. No, buying from. If I turn my lights on,
2 the lights go on and I get a bill from ComEd, I'm
3 supposed to pay it, people like me.

4 A. Well, the industrial customers could either
5 purchase directly from Commonwealth Edison or from
6 the market themselves.

7 And there was concern about their
8 behavior. So some people were concerned about that.

9 Q. Were the findings ever -- who did you
10 testify on behalf of in that proceeding?

11 A. Southern California Gas.

12 Q. Were they accused of manipulating the
13 market?

14 A. Yes.

15 Q. Was this the situation that was revealed on
16 some of the Enron tapes of traders calling certain
17 suppliers and asking to take their supply off line
18 for a while to increase market prices, wholesale
19 market prices?

20 A. No. No. This is dealing with the gas, not
21 the electricity manipulation allegations.

22 Q. Okay. Let's turn to the electric

1 manipulation allegations that were made in
2 California.

3 You were certainly aware that were there
4 some allegation made revealed on Enron tapes that
5 Enron had asked certain electrical generators to
6 take electricity off line for a while.

7 MR. HANZLIK: Could I just ask what the
8 relevance of this line of questioning is?

9 MR. ROSEN: I'll get there.

10 MR. HANZLIK: I'd like a better explanation
11 because I don't understand exactly how this is
12 relevant or where this is in Mr. Hogan's testimony.

13 MR. ROSEN: Well, he testified about the
14 integrity of the market and this is all relevant to
15 the integrity of the market, especially here in
16 Illinois.

17 MR. HANZLIK: It's a totally different market
18 and a totally different regulatory scheme and a
19 totally different restructural statute out there. I
20 haven't seen the foundation laid for this or the
21 relevance of this.

22 JUDGE WALLACE: All right. Ask a few more

1 questions and let's see where this is going.

2 THE WITNESS: What was the question?

3 MR. ROSEN: Q. Are you aware of the
4 allegations made about the manipulation of the
5 market, the electric market out there that caused an
6 increase in wholesale market prices?

7 A. I know about many of the allegations. I
8 don't know that I know all of them.

9 Q. Okay. And what were those allegations?

10 A. Well, there were allegations that people
11 withheld electric power plants and didn't produce
12 when it was economical to produce in order to raise
13 prices and profit from those increased prices.

14 There were allegations of people selling
15 power outside of -- exporting power from California
16 and then turning around and selling it back at the
17 same time, roundtrip trading. There are various
18 names for it.

19 There were allegations about people
20 submitting schedules day ahead for balanced
21 shipments when they didn't actually have the load
22 and then they were going to supply the power during

1 the spot market or purchase it during the spot
2 market.

3 This is -- I think they called it fat boy,
4 which is the case. And there are allegations about
5 people -- well, but there were more. I just don't
6 remember them all.

7 Q. Okay. And so this is an example of how a
8 few electric power providers supposedly caused an
9 increase in the market price by turning off their
10 power for a bit.

11 Is that correct? That's the essence or the
12 gist of those allegations?

13 A. Well, I think that's not quite correct.

14 Q. Well, why don't you correct it for me,
15 then?

16 A. Well, there's -- some of the allegations
17 were not of that character and then some of them
18 were. And then there's a question of whether or not
19 it was actually true.

20 So the -- but let's take an example, which
21 the purchase and of the round-trip example, which
22 not intended necessarily to raise the price. It

1 just followed the rules.

2 And what it actually -- the net effect was
3 to make actually more power available for people in
4 California and to lower the, at least the marginal
5 prices across the system.

6 Now, some of the transactions were at
7 capped prices, so they weren't affected, but -- so
8 that was an example of something which actually was,
9 because of the rules, they had to do it that way.

10 The same was true with the clean air,
11 quote, fat boy. That was an example of something
12 that deviated from the rules, but it actually had
13 the effect of making more supply available. That
14 made more money for the people who were doing it,
15 but for the market as a whole, it was actually --

16 Q. But were there some allegations that power
17 was turned off at certain inappropriate times that
18 per the allegations that did have an impact on
19 causing market prices to go up, though. Right?

20 A. I know that there were many, many such
21 allegations which to my knowledge have never
22 withstood the test of actually looking at what

1 happened.

2 So that when you track them down, I don't
3 know of any such allegation that's actually
4 turned out to be supported by the evidence.

5 Q. Let's turn now to the PJM market here.
6 Okay. And let's talk about the bidding process
7 here.

8 There's been some testimony about how
9 bidders may be reluctant to bid in the PJM -- excuse
10 me -- into the auction here because of the
11 availability of other markets, PJM market and so
12 on. They can sell the power elsewhere.

13 Have you heard that testimony?

14 A. Well, I haven't heard it. I've read it,
15 but --

16 Q. Okay.

17 A. But I don't think that's quite the
18 characterization that I would want it read.

19 Q. Okay. How would you characterize it?

20 A. Well, not that they're unwilling to bid
21 into the auction. Just that they're unwilling to
22 sell into the auction at prices that are materially

1 lower than the prices they can obtain elsewhere.

2 Q. Okay. Now, let's take the flip side now.

3 Why would someone have an incentive to bid into
4 the auction proposal?

5 A. Well, the principal reason would be risk
6 mitigation and having less volatile sources of
7 revenues.

8 Q. Okay. Are there other incentives as to why
9 they might have to bid into the auction despite the
10 fact that they might be able to sell their
11 electricity elsewhere?

12 A. Well, there are other things I could think
13 of that are derivative from what I just said. So if
14 you've risked it and then hadn't mitigated the risk,
15 then you have a more stable source or revenues and
16 you could get financing for other things you might
17 want to do for a new entrance, for example.

18 Q. Would you expect bidders in PJM and MISO to
19 use PJM market prices, either day-ahead or real-time
20 prices, in at least part of their calculations to
21 what they might want to bid into the auction which
22 is the subject of this proceeding?

1 A. Well, I would expect them to use forecasts
2 of those prices.

3 Q. Okay. Meaning they would use the PJM
4 prices in one form or another, prepare forecasts to
5 what they might want to bid?

6 A. Well, the only distinction I'm just trying
7 to make is that they'll be trying to look forward
8 and it might be that the conditions in the past were
9 different for some reason and that they would say,
10 the past numbers aren't really relevant.

11 They might have forward market trades
12 already so that there's a market price out there.
13 So it's not unrelated to the PJM prices, but it's
14 not necessarily determinative.

15 Q. In terms of as the auction progresses,
16 let's assume that the auction has taken place and
17 bids are coming in and you have an auction manager
18 who's monitoring it and he or she is looking at
19 these bid prices.

20 Are they going to use the PJM markets in
21 any way as a means of trying to determine whether
22 the bids are close to a market price or not?

1 A. Well, I don't think it -- the auction
2 manager's responsibility is to do that. They're
3 announcing prices and lowering the prices, but there
4 is an initial reservation price, which I don't know
5 how that's set.

6 But I would assume it's going to be
7 reasonably high. And then they decrement those
8 prices until they get to a situation where the bids
9 aren't changing.

10 The quantity often -- the participants
11 don't actually bid prices.

12 Q. Right.

13 A. They respond to prices that are announced.

14 Q. Is the PJM prices, though, either real-time
15 or day-ahead prices going to have any role in
16 determining whether or not the bid prices reflect
17 what market prices might be?

18 A. Well, any role -- I mean, if you're talking
19 about if there's something where they're
20 dramatically different, I suppose the answer is
21 yes. But as a formal matter I think no. They're
22 not going to be checking that.

1 Q. Is there any incentive or is there any
2 advantage to bidders of having the PJM prices rise
3 or be high at the time that this auction process
4 takes place?

5 A. Are you talking about forecasted prices?

6 Q. Yeah.

7 A. Sure. The bidders who are selling and have
8 secured arrangements and are sitting there and it
9 turns out everybody thinks that we just had a big
10 disruption in supply and there's not going to be
11 anything available and prices are going to be higher
12 than the sellers are better off.

13 Q. As a theoretical or practical -- as a
14 possibility, then, does Staff raise any concern that
15 there may be some wrongful manipulations of the PJM
16 prices at or near the time that this auction process
17 takes place?

18 A. Well, it would have to be manipulation
19 which was able to affect the forward prices, not
20 just the current prices.

21 And so -- and I would expect these market
22 participants to be looking behind, you know, why did

1 prices go up all of the sudden and now is this going
2 to be true for a year or three years or five years
3 of different products.

4 So I think it's pretty hard to do anything
5 in the short term that changes the long-term
6 fundamentals. So if you could do something which
7 changes the long-term fundamentals, I suppose that
8 would have an effect.

9 Q. Well, what if the prices went up for a
10 couple of weeks before the auction took place. I'm
11 asking you to assume they were artificially
12 manipulated upwards and someone knew that and then
13 once the manipulative act disappeared, they would
14 expect the market prices to go down sometime after
15 the auction, would that be something that might
16 affect the integrity of the marketplace and have a
17 negative impact on the auction itself?

18 MR. HANZLIK: I'm going to object to the
19 question unless it's clear that you're asking a
20 hypothetical.

21 There's no foundation been laid that this
22 is at all possible given the PJM rules and the way

1 PJM operates. You haven't established this is at
2 all possible.

3 MR. ROSEN: Q. Just purely hypothetical.

4 A. Well, since it's purely hypothetical,
5 hypothetically it could go either way.

6 Q. So it could be negative or it could be
7 positive? It could go either way?

8 A. But if you were --

9 Q. If you were a consumer, you wouldn't want
10 to see it go negative, would you?

11 A. No. I mean -- well, and if the event was
12 revealed that somebody had market power in the spot
13 market, it might stimulate new and more restrictive
14 mitigation practices, which would lower future
15 prices.

16 So it might be the result that you would
17 anticipate prices would be lower so you bid lower in
18 the auction 'cause you knew the price was actually
19 going to be lower. I don't know.

20 Q. You don't know.

21 Is it something that might be readily
22 apparent, though?

1 A. That somebody had successfully manipulated

2 --

3 Q. The market.

4 A. For a week or two?

5 Q. Yes.

6 A. Changed the view of the fundamentals?

7 Q. Or a couple of weeks.

8 A. And then changed the view of the five-year
9 fundamentals and extracted profits from that?

10 Since it's -- I can't imagine how to do it,
11 I also can't imagine how to detect it.

12 Q. Have you ever done any expert analysis in
13 the area of the NASDAQ market, for instance?

14 A. No.

15 Q. Were you aware of several years ago an
16 anti-trust litigation resulting from the NASDAQ
17 market that was asserted against market-makers on
18 NASDAQ market?

19 MR. HANZLIK: Object to this question. No
20 relevance at all to this witness' testimony.

21 MR. ROSEN: I'm just testing -- he made a
22 statement and I'm testing whether he's aware of any

1 other areas. And if the answer is no, that's it, of
2 market manipulation in a transparent market, which
3 was the NASDAQ market.

4 JUDGE WALLACE: All right. Go ahead.

5 THE WITNESS: I didn't say that I was not aware
6 of any manipulations in market. I don't know how to
7 do what you're talking about in the PJM context.

8 MR. ROSEN: Q. Just because you're not aware
9 of it doesn't mean someone else might not be able to
10 do it that's not part of the market. Correct?

11 A. Right.

12 Q. Do you have an opinion of whether
13 consumers, Commonwealth Edison customers are going
14 to have to pay more on their per kilowatt hours as a
15 result of this auction?

16 A. Yes.

17 Q. And what's your opinion about that?

18 A. Well, to answer -- the way you posed the
19 question, I think the answer is clear, which is as a
20 result of the auctin, it won't have an effect on
21 what they pay.

22 Well, it might make it a little lower

1 compared to the alternatives. But basically it's
2 not the auction that's going to change prices.

3 Q. What's going to change prices? The fact
4 that ComEd is acquiring its power on the wholesale
5 market?

6 A. Correct.

7 Q. How are other -- other than an auction
8 process, what are other utility companies doing to
9 acquire power on the wholesale market?

10 A. Well, it's -- there's everything from
11 building new power plants to acquiring power plants
12 to signing long-term contracts to letting and --
13 doing nothing and letting the spot market determine
14 it, having auctions, mixtures of those things.

15 Q. And when you say enter into long-term
16 contracts, we're talking about bilateral agreements
17 between a buyer of power and a seller of power?

18 A. Well, yes. I mean, some of these contracts
19 are very financial in their nature. So the seller
20 of power may actually not own any power plants, but
21 yes.

22 Q. Have you reviewed any such contracts?

1 A. Well, I've seen many such contracts, yes.

2 Q. Well, when you see them, what do you mean

3 by -- have you looked at them? Have you read them?

4 A. Yes.

5 Q. Okay. So you looked at them at least?

6 A. I haven't looked at them in this

7 proceeding, but in other contexts, yes.

8 Q. Okay. What's the longest term of a

9 contract that you've seen?

10 A. Well, I don't know for sure, but I wouldn't

11 be surprised if ten years wasn't the longest.

12 Q. Okay. And was -- and did you look at the

13 rate that was being charged?

14 A. Well, I'm sure I must have.

15 Q. Okay. Was it a fixed rate?

16 A. I don't remember enough about -- I didn't

17 review any of these things for today. This is

18 mostly in the California context, for example.

19 Q. Have you yourself done any forecasts of

20 what you think market wholesale prices might be in

21 the Northern Illinois region from the years 2007

22 through 2011?

1 A. No.

2 Q. Now, have you done any -- well, let's turn
3 to the MISO. How long has that been in existence?

4 A. Well, I don't know the precise year that it
5 was organized as a cooperative, but a few years.

6 Q. Have you compared MISO wholesale prices
7 with comparable PJM prices?

8 A. Not recently, no.

9 Q. Have you done it at all?

10 A. Well, I'm sure sometime years ago when I
11 was first getting started I might have looked at
12 some things like what was happening in the
13 footprint. But I don't remember exactly.

14 Q. As you sit here today, you don't know how
15 -- whether there was any price differences between
16 the MISO market, let's say day-ahead prices versus
17 the PJM day-ahead prices?

18 A. Well, I haven't examined them myself. I've
19 had people from PJM and MISO characterize them to me
20 is that they were working converging and, for
21 example, prices at the seams were becoming close
22 together and so on.

1 Q. Okay. But when you say close together, I
2 take it were they apart for a while?

3 A. I believe they were, yes.

4 Q. And close together, they're getting closer,
5 but I'm assuming that there's still some separation
6 between the two?

7 A. I assume that's what they meant.

8 Q. Is that as a result of the seam that exists
9 between MISO and PJM?

10 A. Well, I haven't analyzed it exactly. But
11 if there were no seam and they had a single, you
12 know, coordinated dispatch and LMP prices, there
13 wouldn't be any price differential by definition,
14 so.

15 Q. So the flip side is, then, as a result
16 there must be some seam that has created the
17 difference between the prices, then. Is that a fair
18 statement?

19 MR. HANZLIK: Objection. It hasn't been
20 established that there is a difference in price.

21 JUDGE WALLACE: Sustained:

22 MR. ROSEN: Q. Well, is there a price

1 difference between PJM prices and MISO prices at or
2 near the seam?

3 A. I have been told that there is a difference
4 and it is less than was anticipated.

5 Q. Okay. And is it your opinion that that
6 difference is a result of some seam that exists
7 between MISO and PJM?

8 A. Well, again, it's the hypothetical as to
9 what's the counterfactual. So if you meant not
10 having a seam means putting them into one big, giant
11 or virtual RTO, then the answer is yes.

12 If the answer is suppose we didn't have
13 MISO and the RTO is what we had. All of the
14 individual control areas and we went back to where
15 we were a few years say it was caused by a seam
16 between -- say, Enough. It's caused by all these
17 other things that are going on.

18 So it depends on what the alternative is, I
19 guess. So if you're talking about -- if you put
20 them together in a single, then the answer is there
21 would be no seam and there would be no differences
22 along the seam.

1 Q. Have you done any analysis of the MISO
2 markets to determine how that might competitively
3 either benefit or be a detriment to the auction
4 process that's the subject of this proceeding?

5 A. Well, the principal focus I've had is on
6 the design of the MISO market and particularly the
7 way it operates over the day-ahead and real-time and
8 how well it is designed, which one of the problems
9 they had in California 'cause they didn't do well.

10 They didn't even do it, so. So I have
11 looked at that for the MISO.

12 Q. I mean, have you actually taken and looked
13 at the pricing of the MISO market and done a
14 quantitative analysis of how that price, the actual
15 prices might affect negatively or positively the
16 bidding process or the auction process that is the
17 subject of this proceeding?

18 A. Well, no.

19 MR. ROSEN: We have nothing further.

20 JUDGE WALLACE: Why don't we break for a few
21 minutes.

22 (Whereupon a short recess

1 was taken.)

2 JUDGE WALLACE: We have three witnesses,
3 Dr. Hogan, Parece, and Graves. We will start at
4 nine and then we'll be finished for the week.

5 We're adjourned until nine tomorrow.

6 (Whereupon the hearing in
7 the above matter was continued
8 until 9:00 a.m. September 2, 2005,
9 in Springfield.)

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